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**Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime**
First session
Vienna, 19-29 January 1999
Item 4 of the provisional agenda*
Consideration of the draft convention against transnational organized crime

# Report on the third session of the informal working group established to assist the Chairman of the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime, held at Vienna from 5 to 6 November 1998

1. The informal working group established to assist the Chairman of the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime (the informal group of the "Friends of the Chair") held its third session at Vienna from 5 to 6 November 1998. The following countries were represented: Argentina, Australia, Austria, Bolivia, Brazil, Bulgaria, Canada, Chile, China, Colombia, Costa Rica, Ecuador, Finland, France, Germany, Guatemala, Italy, Japan, Mexico, Morocco, Netherlands, Norway, Paraguay, Peru, Philippines, Poland, Romania, Russian Federation, Spain, Sudan, Sweden, Switzerland, Tunisia, Turkey, United Kingdom of Great Britain and Northern Ireland and United States of America. The European Commission and the United Nations International Drug Control Programme were represented by observers.

2. The third session was opened by Ronald Miklau, Head of the Criminal Law Directorate of the Ministry of Justice of Austria. The third session was chaired by Luigi Lauriola (Italy), who was to be elected Chairman of the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime.

3. The informal group of the "Friends of the Chair" adopted the following agenda:

1. Adoption of the provisional agenda and organization of work.
2. Provisional agenda and organization of work for the first session of the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime.
3. Consultations on issues to be discussed by the Ad hoc Committee at its first session.

*A/AC.254/1.

4. The informal group had before it drafts of the following documents:

(a) Annotated provisional agenda and proposed organization of work of the first session of the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime (A/AC.254/1);

(b) Report of the informal preparatory meeting of the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime, held at Buenos Aires from 31 August to 4 September 1998 (A/AC.254/3);

(c) Draft United Nations Convention against Transnational Organized Crime (A/AC.254/4);

(d) Elements for an international legal instrument against illegal trafficking in and transporting of migrants: proposal submitted by Austria and Italy (A/AC.254/4/Add.1);

(e) Draft protocol against the illicit manufacturing of and trafficking in firearms, ammunition and other related materials supplementary to the United Nations Convention against Transnational Organized Crime: proposal submitted by Canada (A/AC.254/4/Add.2).

5. Some participants expressed concern about the lack of interpretation at the third session, which in their view limited their ability to fully participate in the work of the informal group. A representative of the Secretariat explained that no conference facilities were currently available at the Vienna International Centre and that, consequently, it had organized the third session at the Ministry of Justice of Austria, with the support of the Ministry of Justice and the Ministry of Foreign Affairs of Austria. The logistical difficulties involved and the lack of resources had made the provision of interpretation impossible. The Secretariat would make every effort to secure interpretation services in English, French and Spanish for subsequent sessions of the informal group, provided that there was no departure from the provisional timetable that the informal group had approved at its second session, held at Buenos Aires on 3 September 1998 (A/AC.254/3, annex I, appendix).

6. The informal group reviewed the provisional agenda and proposed organization of work for the first session of the Ad Hoc Committee. Several participants were of the view that the time allocated to the discussion of the additional international legal instruments should allow at least a first reading of the draft texts. The draft texts of the legal instrument against illegal trafficking in and transporting of migrants and the legal instrument against the illicit manufacturing of and trafficking in firearms, ammunition and other related materials had already been submitted. The Governments of Argentina and the United States had announced their intention to submit to the Secretariat by the end of November 1998 elements for a draft international legal instrument against trafficking in women and children. There was also considerable discussion on the desirability and feasibility of holding informal consultations during the sessions of the Ad Hoc Committee on the additional international legal instruments, in view of the expertise required for their elaboration. It was understood that it remained the prerogative of States to meet and consult informally in their efforts to reach consensus on matters related to the elaboration of the convention against transnational organized crime and the additional instruments. However, the informal group attached considerable importance to ensuring the transparency of the negotiation process and the maximum participation of States. Furthermore, it was essential to maintain the appropriate balance in the elaboration of the convention and the additional instruments. Therefore, the informal group agreed that the Ad Hoc Committee should avoid, to the extent possible, establishing separate groups to discuss the drafts of the additional instruments. The informal group also agreed that, at the first session of the Ad Hoc Committee, to be held from 19 to 29 January 1999, one and one half days should be allocated to the discussion of the draft legal instrument against illegal trafficking in and transporting of migrants and one and one half days should be allocated to the discussion of the draft legal instrument against illicit manufacturing of and trafficking in firearms, their parts and components and ammunition, while the draft legal instrument against trafficking in

women and children should be only introduced and should be discussed at the second session of the Ad Hoc Committee, to be held from 8 to 12 March 1999.

7. The informal group endorsed the provisional agenda and proposed organization of work for the first session of the Ad Hoc Committee. A representative of the Secretariat stated that the provisional agenda and proposed organization of work would accompany the letter of invitation to the first session of the Ad Hoc Committee, in order to allow States to include the appropriate expertise in their delegations.

8. The informal group requested the Secretariat to explore the possibility of converting the session of the informal group of the "Friends of the Chair" to be held from 5 to 9 July 1999 into a session of the Ad Hoc Committee. The Secretariat would inform the Ad Hoc Committee at its first session whether the additional cost could be absorbed.

9. The representatives of Austria and Italy introduced the draft of the legal instrument against illegal trafficking in and transporting of migrants, and the representative of Canada introduced the draft legal instrument against the illicit manufacturing of and trafficking in firearms, ammunition and other related materials. Both of those draft legal instruments had been submitted for the consideration of the Ad Hoc Committee. The informal group was of the view that the draft texts were a sound basis for further discussion and work on the elaboration of the instruments. The representative of the United States submitted comments on the draft legal instrument introduced by the representative of Canada, to be distributed as part of the official documentation of the Ad Hoc Committee.

10. The informal group held an extensive discussion on the scope of application of the convention. Several participants were of the view that the scope of the convention should be flexible to allow for specific provisions that were intended as practical tools to be considered individually for the purpose of enhancing their relevance and efficiency. It was emphasized that the convention should be an instrument that would facilitate the prevention, investigation, prosecution and adjudication of cases involving transnational organized crime. Therefore, it was generally deemed important to ensure the ease of application, as well as the effectiveness and efficiency, of the new instrument. The representative of the United States submitted proposals on the scope of application of the convention, to be distributed as part of the official documentation of the Ad Hoc Committee.

11. One representative reiterated the position of his Government that the convention should contain a list of offences that included terrorist acts.

12. The Chairman noted with satisfaction the high level of the discussion and the apparent convergence of views on the question of the scope of application of the convention. The informal group agreed that the Ad Hoc Committee should carry out its important functions in a spirit of flexibility and pragmatism. Any remaining difficulties in resolving the issue of the scope of application should not be allowed to hamper progress in the negotiations. Thus, the Ad Hoc Committee might wish to proceed with the negotiation of other provisions, returning regularly to the provisions on the scope of application to ensure consistency.

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**Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime**
First session
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Item 5 (a) of the provisional agenda*
Consideration of the additional international legal instruments

# ILLICIT MANUFACTURING OF AND TRAFFICKING IN FIREARMS, THEIR PARTS AND COMPONENTS AND AMMUNITION

## Ongoing international initiatives related to the elaboration of an international legal instrument against illicit manufacturing of and trafficking in firearms, their parts and components and ammunition

## I. INTRODUCTION

1. The informal working group established to assist the Chairman of the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime (the informal group of the "Friends of the Chair"), at its third session, held in Vienna from 5 to 6 November 1998, requested the Secretariat to prepare a summary of international initiatives in the area of illicit manufacturing of and trafficking in firearms, their parts and components and ammunition. The purpose of the summary would be to enable States and the Ad Hoc Committee to foster inter-agency and international coordination in that field and to ensure complementarity of international initiatives, especially in the context of the consideration by the Ad Hoc Committee of the draft international legal instrument on illicit manufacturing of and trafficking in firearms. The present document has been prepared pursuant to the above request.

## II. INITIATIVES WITHIN THE UNITED NATIONS

### A. Recommendations of the Panel of Governmental Experts on Small Arms

2. The General Assembly, in its resolution 52/38 J of 9 December 1998, welcomed the submission of the report of the Secretary-General prepared with the assistance of the Panel of Governmental Experts on Small

*A/AC.254/1.

Arms (A/52/298, annex). The report contained recommendations on measures to reduce excessive and destabilizing accumulation and transfer of small arms and light weapons in specific regions of the world and to prevent such accumulations and transfers from occurring in the future. The Assembly, in the same resolution, endorsed those recommendations and requested the Secretary-General to implement them, within available financial resources, and in cooperation with appropriate international and regional organizations where necessary.

3. Suggested measures in the recommendations of the report included: implementation of the guidelines for international arms transfers adopted by the Disarmament Commission in 1996;[1] encouragement of the adoption and implementation of regional or subregional moratoriums on the transfer and manufacture of small arms and light weapons; encouragement of the regional initiatives similar to the Inter-American Convention against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives, and Other Related Materials; and consideration of the possibility of convening an international conference on the illicit arms trade.

### B. Guidelines for international arms transfers

4. The General Assembly, in its resolution 46/36 H of 6 December 1991, called upon all States to give high priority to eradicating the illicit trade in all kinds of weapons and urged Member States to exercise effective control over their arms imports and exports. Subsequently, in 1996, the Disarmament Commission adopted the guidelines for international arms transfers.

5. Suggested ways and means of fighting illicit arms trafficking at the international level include a requirement by the exporter for import licences or verifiable end-use/end-user certificates for international arms transfers; the sharing of relevant customs information and coordination of intelligence efforts to ensure effective control of borders; and the application of compatible standards in the procedures for regulating the export and import of arms.

### C. Coordinating Action on Small Arms

6. The Secretary-General has designated the Department for Disarmament Affairs of the Secretariat as the focal point to coordinate all action on small arms within the United Nations system. The decision was taken on 24 June when the Senior Management Group met under the chairmanship of the Secretary-General. The Coordinating Action on Small Arms, established by the Department as the mechanism for implementing the decisions of the Secretary-General, held its first meeting on 4 August 1998. All of its members, United Nations entities, departments and programmes with comparative advantage in the field of small arms have nominated focal points in order to ensure cooperation. The Centre for International Crime Prevention of the Office for Drug Control and Crime Prevention of the Secretariat is coordinating its activities on firearm regulation within that mechanism.

## III. INTERNATIONAL INITIATIVES

### A. Principles and action plan recommended by the Senior Experts Group on Transnational Organized Crime and endorsed by the G-8

7. On 17 May 1998, at the Birmingham Summit of the Eight, the heads of State or Government of the seven leading industrial countries (Canada, France, Germany, Italy, Japan, United Kingdom of Great Britain and Northern Ireland and United States of America) and the Russian Federation endorsed the principles and action plan of the G-8 Senior Experts Group on Transnational Organized Crime to combat illegal manufacturing of and trafficking in firearms. The endorsed action plan includes: marking of firearms; ensuring timely exchange of information; establishing an import/export and in-transit authorization regime for the international transfer

of firearms; and working towards the elaboration of a binding international legal instrument in the context of the United Nations convention on transnational organized crime.

### B. Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies

8. The Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies received final approval by the 33 co-founding participating States in July 1996 and began operation in September 1996. It is designed to contribute to regional and international security and stability, by promoting transparency and greater responsibility in transfers of conventional arms and dual-use goods and technologies, thus preventing destabilizing accumulations. Participating States are committed to exercising effective national export controls on small arms and light weapons, which are included in the Wassenaar Arrangement Munition List, with the objective of preventing unauthorized transfers or re-transfers of those items.

### C. Oslo agreement of common understanding

9. In the Oslo meeting on small arms, held in Oslo, on 13 and 14 July 1998, representatives of 21 Governments reached a common understanding on an international agenda on small arms and light weapons. The follow-up action will range from combating the illicit traffic in small arms and introducing tighter control of legal transfers to reducing the number of small arms in war-torn societies.

### D. The Brussels Call for Action

10. The International Conference on "Sustainable Disarmament for Sustainable Development", held in Brussels on 12 and 13 October 1998, issued the Brussels Call for Action[2] as a reference point for further action on small arms disarmament in the short and medium term. The action called for includes: strengthening national, regional and international regulations on the transfer of arms to enhance international cooperation; supporting the elaboration of an international instrument to combat illicit manufacturing of and trafficking in firearms; and adopting codes of conduct in international arms transfers to restrict the transfers to legitimate actors.

## IV. REGIONAL INITIATIVES

### A. Inter-American Convention and Model Regulations

11. On 13 November 1997, the General Assembly of the Organization of American States (OAS) adopted the Inter-American Convention against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives, and Other Related Materials (A/AC.254/CRP.1). The purpose of the Convention is to prevent, combat and eradicate illicit manufacturing of and trafficking in firearms, ammunition, explosives and other related materials and to promote and facilitate cooperation and the exchange of information and experiences among the States parties to the Convention in order to pursue the above-mentioned goals. The suggested strategies include: marking of firearms; introducing stringent export and import and transit authorizations; strengthening controls at export points; confiscating illegally manufactured or illegally transported firearms and ammunition; and exchange of information.

12. On 2 June 1998, the OAS General Assembly also adopted the Model Regulations for the Control of the International Movement of Firearms, Their Parts and Components, and Ammunition. The purpose of the Model Regulations is to set out, for use on a multilateral basis, harmonized measures and a harmonized system of

procedures for monitoring and controlling the international movement of firearms, their parts and components and ammunition, in order to prevent their trafficking and diversion to illicit channels. The Model Regulations are an essential building block of the implementation of the Inter-American Convention, focusing on improving the control of the legal international movement of firearms, their parts and components and ammunition.

### B. European Union Programme for Combating and Preventing Illicit Trafficking in Conventional Arms and the code of conduct for arms exports

13. In June 1997, the Council of the European Union (EU) adopted the EU Programme for Preventing and Combating Illicit Trafficking in Conventional Arms. The Programme provided a framework for EU action in the following main areas: (a) strengthening efforts to prevent and combat illicit trafficking in arms from and through EU; (b) taking concerted action to assist other countries in preventing and combating illicit arms trafficking; and (c) taking concerted action to assist countries in post-conflict situations.

14. Complementing this Programme is the code of conduct for arms exports, which was adopted by the Council of the European Union in June 1998. The code contains eight criteria that EU members will take into account in their national decision-making on arms exports, such as: the respect for the international commitments of EU member States (criterion one); the respect of human rights in the country of final destination (criterion two); the preservation of regional peace, security and stability (criterion four); the existence of a risk that the equipment will be diverted within the buyer country or re-exported under undesirable conditions (criterion seven).

15. In 1998, under the framework of the Programme, EU and its member States have started to develop a dialogue with the South African Development Community (SADC) and its members, with a view to supporting SADC member States to tackle small arms proliferation and illicit arms trafficking.

### C. The declaration of the moratorium on small arms in western Africa

16. During the international conference held in Oslo on 1 and 2 April 1998, the President of Mali presented a proposal on a moratorium on the manufacture, export and import of small arms in western Africa, in the presence of 13 member States of the Economic Community of West African States (ECOWAS), 23 Wassenaar Arrangement member States and relevant United Nations organizations, non-governmental organizations and observer States. The moratorium is open to all African countries and is not a binding mechanism. The declaration on the moratorium was adopted by the Conference of Heads of State and Government of ECOWAS in Abuja, Nigeria, on 30 October 1998 and came into effect on 1 November 1998 for a renewable period of three years.

***Notes***

[1] *Official Records of the General Assembly, Fifty-first Session, Supplement No. 42* (A/51/42), annex I.

[2] The Brussels Call for Action has been circulated in a document of the General Assembly (A/53/681, annex).

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**Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime**
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Item 5 (a) of the provisional agenda*

# CONSIDERATION OF THE ADDITIONAL INTERNATIONAL LEGAL INSTRUMENTS AGAINST TRAFFICKING IN WOMEN AND CHILDREN

## Draft elements for an agreement on the prevention, suppression and punishment of international trafficking in women and children, supplementary to the Convention against Transnational Organized Crime: submitted by Argentina

*Preamble*

*The States Parties to this Agreement,*

*Considering* the need to supplement the provisions of the Convention against Transnational Organized Crime by the adoption of an agreement that deals in particular with international trafficking in women and children,

*Aware* that international trafficking in women and children constitutes a universal concern,

*Bearing in mind* that these two categories of person are more vulnerable than men to the risk of being victims of certain types of illicit acts,

*Bearing in mind also* that, while there is a wide variety of international legal instruments containing provisions aimed at combating sexual exploitation of women and children, in particular the Convention on the Rights of the Child[1] and the Convention for the Suppression of the Traffic in Persons and of the Exploitation of

*A/AC.254/1.
[1]Resolution 44/25, annex.

the Prostitution of Others,[2] there is no such instrument whose specific objective is to deal with the problem of international trafficking in children for any purpose or of trafficking in both categories of person by criminal organizations,

*Convinced* of the need to establish an agreement for the prevention, suppression and punishment of these forms of illegal conduct,

*Reaffirming* the importance of international cooperation in the effective prevention and suppression of unlawful acts of this kind,

*Adopt* the following Protocol:

*Article 1*

*Objective*

1. The objective of this Protocol is the prevention, suppression and punishment of international trafficking in women and children.

2. To that end, States Parties undertake:

(a) To adopt effective measures, in conformity with their domestic law, for preventing and severely punishing members of criminal organizations whose aims include international trafficking in women or children, as defined in this Agreement;

(b) To ensure the protection of women and children, in accordance with their best interests;

(c) To adopt relevant penal and administrative provisions for the purpose of preventing, suppressing and punishing international trafficking in women and children;

(d) To establish a system of judicial cooperation between States Parties that will facilitate the prosecution of unlawful acts connected with international trafficking in women and children;

(e) To ensure the prompt return of children or women victims of trafficking to their country of habitual residence;

(f) To prevent any type of penalty being imposed on women or children victims of international trafficking;

(g) To progressively abolish those practices which allow husbands, families or clans to order the transfer of a woman to another person for payment or otherwise for the benefit of an international criminal organization;

(h) To devote all means to guaranteeing victims appropriate legal, medical, psychological and financial assistance whenever States Parties deem it necessary.

[2] Resolution 317 (IV), annex.

*Article 2*

*Scope of application*

The provisions of this Agreement shall apply to any child or woman who is, or habitually resides, in a State Party at the time of commission of an act of international trafficking of which that person is a victim.

*Article 3*

*Definitions*

For the purposes of this Agreement:

(a) "Child" shall mean any person under the age of 18 years;

(b) "International trafficking in children" shall mean any act carried out or to be carried out for an illicit purpose or aim, in a country other than that of the habitual residence of the child, by a criminal organization, jointly or through any of its members, that involves:

(i) Promoting, facilitating or arranging the abduction, holding or concealment of a child, with or without his or her consent, whether or not for profit, and whether occasionally or repeatedly; or

(ii) Offering, handing over or receiving a child in exchange for money or any other consideration in kind, or acting as an intermediary in any such acts;

(c) "International trafficking in women" shall mean any act carried out or to be carried out for an illicit purpose or aim by any individual or corporate entity in an organized manner, whether or not on behalf of another, whether or not for profit and whether occasionally or repeatedly, that involves:

(i) Promoting, facilitating, arranging, inciting or participating in the abduction, holding or concealment of a woman, with or without her consent, for illicit purposes or in order to force her to perform, not perform or tolerate an act or to subject her unlawfully to the power of another person;

(ii) Transporting a woman to or facilitating her entry into another State;

(d) "Illicit purpose or aim" shall mean:

(i) Reduction to slavery, servitude or other similar condition;

(ii) Maintenance of the victim in such conditions in order to demand, under the threat of some penalty, the performance of forced and compulsory labour to which the victim has not voluntarily consented or in order to force the person, in accordance with custom or by agreement, for payment or free of charge, to provide certain services without the freedom to change his or her condition;

(iii) The prostitution or other form of sexual exploitation of a woman or child, even with the consent of that person;

(iv) Any means of production, distribution or importation, in their present or future forms, of graphic or audiovisual materials focused on the sexual conduct of women or children or on the genitals of such persons;

(v) The organization, promotion or use of tourism-related activities or journeys involving the sexual exploitation of women;

(vi) Facilitating, promoting or acting as an intermediary in acts aimed at rendering uncertain, changing or annulling the marital status of a woman, in any manner or by any means, whether or not for payment or for the promise thereof, whether or not in accordance with a traditional or customary practice and with or without the use of threats or abuse of authority;

(vii) Extraction of body organs or organic tissue.

*Article 4*

*Classification of offences*

States Parties shall undertake to classify as a criminal offence trafficking in women and children as defined in this Agreement. Attempts and participation in any aspects of the offence (complicity or instigation) shall be punishable. States Parties shall also undertake to establish penalties for such offences in accordance with their gravity.

*Article 5*

*Seizure and confiscation of gains*

States Parties shall take all necessary and appropriate measures to allow the seizure and confiscation of gains obtained by the criminal organization from the offences described in article 3 of this Protocol. The proceeds from such seizure and confiscation shall be allocated towards defraying the costs of providing due assistance to the victim, where deemed appropriate by States Parties and as agreed by them, in conformity with individual guarantees enshrined in domestic legislation.

*Article 6*

*Special aspects of international cooperation*

States Parties shall cooperate with non-States parties in the prevention, suppression and punishment of illicit international trafficking in women and children and in the protection and care of women and children victims of such unlawful acts. Accordingly, the competent authorities of States Parties shall be required to notify the competent authorities of a non-State party of cases where, on their territory, there is a child or woman who is a national of that non-State party and who has been a victim of trafficking in a State Party. States Parties shall inform the Secretary-General of the United Nations of the existence of non-governmental organizations devoted to the prevention of the offences covered by this Agreement, so that a database may be established for the purpose of permitting information exchange among these organizations and States.

*Article 7*

*Information and education*

States Parties shall:

(a) Endeavour to undertake, including through non-governmental organizations, information campaigns and programmes to generate public awareness of the gravity of offences relating to international trafficking in women and children, such programmes to include information on potential victims, causes and consequences of trafficking, penalties for unlawful acts and the risks that such offences represent to the life and health of the victims;

(b) Establish methods for systematic gathering of data and promotion of research to determine the modus operandi of international trafficking in women and children;

(c) Encourage, within the private sector, the setting up of professional associations, foundations, non-governmental organizations and research institutes concerned with the problem of international trafficking in women and children;

(d) Promote the establishment of programmes of victim assistance that provide, *inter alia*, for temporary housing, psychological, medical and legal support and the safe return of the victims to their country of origin in cases where not arranged by that country;

(e) Distribute information relating to the different forms of international trafficking in women and children and undertake programmed actions to combat such trafficking.

*Article 8*

*Confidentiality of proceedings*

States Parties shall safeguard the interests of victims of international trafficking in women and children and take steps to ensure that the conduct of any proceedings instituted under this Agreement remain confidential at all times.

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Second session
Vienna, 8-12 March 1999

# Report of Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime on its first session, held in Vienna from 19 to 29 January 1999

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# I. Introduction

1. On the recommendation of the Commission on Crime Prevention and Criminal Justice and the Economic and Social Council (Council resolution 1998/14 of 28 July 1998), the General Assembly adopted resolution 53/111 of 9 December 1998, in which it decided to establish an open-ended intergovernmental ad hoc committee for the purpose of elaborating a comprehensive international convention against transnational organized crime and of discussing the elaboration, as appropriate, of international instruments addressing trafficking in women and children, combating the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition, and illegal trafficking in and transporting of migrants, including by sea. The Assembly also adopted resolution 53/114 of 9 December 1998, in which it called upon the ad hoc committee to devote attention to the drafting of the main text of the convention, as well as the above-mentioned international instruments.

# II. Organization of the session

## A. Opening of the session

2. The Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime held its first session in Vienna from 19 to 29 January 1999. The Ad Hoc Committee held 18 meetings.

3. The first session of the Ad Hoc Committee was opened by its Chairman, who made a brief statement emphasizing the importance of the mandate of the Ad Hoc Committee.

4. The Executive Director of the Office for Drug Control and Crime Prevention of the Secretariat made a statement in which he expressed his conviction that the convention, as the first international instrument to be negotiated on action against transnational organized crime, would be a milestone in the international efforts to curb the phenomenon.

## B. Attendance

5. The first session of the Ad Hoc Committee was attended by representatives of 91 States. Also attending the first session were observers for entities maintaining permanent observer missions to the United Nations, organizations in the United Nations system, institutes of the United Nations Crime Prevention and Criminal Justice Programme network, intergovernmental organizations and non-governmental organizations. A list of participants is contained in annex I to the present report.

## C. Election of officers

6. In its resolution 53/111, the General Assembly decided to accept the recommendation of the Commission on Crime Prevention and Criminal Justice to elect Luigi Lauriola (Italy) as the Chairman of the Ad Hoc Committee. Mr. Lauriola indicated that he was acting in his personal capacity and not as representative of his country or of any regional

group. Following informal consultations, the Ad Hoc Committee elected the following additional officers:

*Vice-Chairmen*: Kiyotaka Akasaka (Japan)
Nabil Ammar (Tunisia)
Demetrio Boersner (Venezuela)*
Zuzana Chuda (Slovakia)
Eric Danon (France)**
Roberta Lajous (Mexico)***
Patricio Palacios (Ecuador)
Janusz Rydzkowski (Poland)
Shaukat Umer (Pakistan)

*Rapporteur*: Peter Gastrow (South Africa)

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* For the work of the Ad Hoc Committee in 1999.

** Subsequently replaced by Bérengère Quincy (France).

*** For the work of the Ad Hoc Committee in 2000.

7. The bureau of the Ad Hoc Committee met several times during the first session to consider matters pertaining to the organization of work.

8. The Ad Hoc Committee was of the view that the election of an expanded bureau would reduce the need for sessions of the informal working group established to assist the Chairman of the Ad Hoc Committee (the informal group of the "Friends of the Chair"), which had functioned during the preparatory phase. It recommended that, subject to the availability of resources, the sessions of the informal group of the "Friends of the Chair" that had been foreseen should be converted into sessions of the Ad Hoc Committee, with interpretation in the six official languages of the United Nations.[1]

9. The Chairman noted that the decision had already been made to convert the one-week session of the informal group of the "Friends of the Chair" foreseen for early July 1999 into an additional session of the Ad Hoc Committee. That had been made possible by the voluntary contribution of one Member State. He encouraged other States to make such contributions to the United Nations Crime Prevention and Criminal Justice Fund in order to promote the elaboration of the draft Convention.

## D. Adoption of the agenda and organization of work

10. At its 1st meeting, on 19 January 1999, the Ad Hoc Committee adopted the following agenda for its first session:

1. Opening of the first session of the Ad Hoc Committee.
2. Election of officers.
3. Adoption of the agenda and organization of work.
4. Consideration of the draft convention against transnational organized crime.
5. Consideration of additional international legal instruments against:
   (a) Trafficking in women and children;

(b) Illicit trafficking in and transporting of migrants;

(c) Illicit manufacturing of and trafficking in firearms, their parts and components and ammunition.

6. Adoption of the report of the Ad Hoc Committee on its first session.

11. After the adoption of the agenda and during the debate, several representatives stressed the need for the timely and accurate translation of documents. Participants were encouraged to inform the Secretariat of any specific inaccuracies or inconsistencies in translations, if possible with suggestions for the appropriate terminology to be used, so that the translators could make the necessary changes in subsequent texts.

12. The representative of Germany, speaking on behalf of the States Members of the United Nations that are members of the European Union, as well as the central and eastern European countries associated with the European Union and the associated country Cyprus, said that the process of negotiating the convention and the additional international legal instruments was a major response to the worldwide concern about the danger posed by transnational crime, a danger that had increased by the globalization of the world economy. He added that the European Union, which had been a strong supporter of that process from the beginning, attached the highest importance to achieving a successful outcome of the negotiations, preferably by the year 2000.

### E. Documentation

13. At its first session, the Ad Hoc Committee had before it, in addition to the documents prepared by the Secretariat, documents containing proposals and contributions submitted by the Governments of Australia, Canada, Colombia, Kuwait, Mexico, the Netherlands, the United Kingdom of Great Britain and Northern Ireland and the United States of America. The list of documents is contained in annex II.

## III. Discussion on the draft Convention

14. The Ad Hoc Committee based its work on a document containing the draft United Nations Convention against Transnational Organized Crime (A/AC.254/4) and on proposals and contributions submitted by Governments (A/AC.254/5 and Add.2). The Chairman noted that that text contained in document A/AC.254/4 had been the result of discussions and consultations held during the following: the meeting of the inter-sessional open-ended intergovernmental group of experts on the elaboration of a preliminary draft of a possible comprehensive international convention against organized transnational crime, held in Warsaw from 2 to 6 February 1998; the seventh session of the Commission on Crime Prevention and Criminal Justice, held in Vienna from 21 to 30 April 1998; and the informal preparatory meeting of the Ad Hoc Committee, held in Buenos Aires from 31 August to 4 September 1998. The draft contained a number of options. On the recommendation of its Chairman, the Ad Hoc Committee decided to focus at its first session on eliminating options, in order to produce a consolidated text that would be the basis for the drafting and negotiation work that it would undertake in its subsequent sessions.

15. The suggestions for consolidating the text and proposals for new or amended provisions, together with specific observations on either the existing text or the substance of new provisions, were included in a new version of the draft Convention.*

16. The Ad Hoc Committee decided to consider articles 4 and 4 *bis*, on money-laundering, together with article 7, on confiscation, and article 8, on transparency of transactions, at its third session, to be held in April 1999. One participant was of the view that the issue of money-laundering might be considered as an additional protocol to the convention.

17. The representative of Algeria, on behalf of the States Members of the United Nations that are members of the Group of 77 and China, stated that the elaboration of the convention and the protocols would require a lengthy negotiating process, one that would continue over the next two years, and that that would place a heavy financial burden on developing countries. He therefore reiterated in the strongest terms the request that resources be made available to the Secretariat to allow the participation in the sessions of the Ad Hoc Committee of at least one expert from the capital of each developing country. The Governments of the States members of the Group of 77 and China were convinced that developing countries would need long-term assistance to implement the obligations arising from the convention and the protocols. He therefore proposed the establishment of a special technical assistance fund for that purpose and announced that a proposal would be submitted under article 21 of the draft convention. He stated that the States members of the Group of 77 and China would also propose a separate section of the draft convention, on international economic cooperation for sustainable development, in order to deal with the causes of organized criminal activity. Finally, the States members of the Group of 77 and China were of the view that the main objective of the convention and its protocols should be to promote international cooperation through partnership based on shared responsibility and respect for the principles of sovereignty, equal rights and non-intervention.

## IV. Discussion on the additional international legal instruments

18. Prior to its consideration of the additional international legal instruments, the Ad Hoc Committee discussed the relationship between those instruments and the convention against transnational organized crime. The discussion was assisted by a contribution by the Government of Australia (A/AC.254/L.9). Pursuant to General Assembly resolutions 53/111 and 53/114, the convention was to be a self-sufficient and self-standing instrument. The highest priority would be given to the signature, ratification and entry into force of the convention, and every effort should be made to negotiate a text that would be conducive to meeting that priority. The additional international legal instruments were viewed in principle as optional protocols to the convention, covering areas that required specificity, which the convention could not meet. There was a need to ensure that the optional protocols would be consistent with the convention, not only to ensure compatibility, but also to maximize the relevance and applicability of general provisions, such as those pertaining to international cooperation, which would be covered under the convention. However, it was pointed out that each instrument was intended to meet specific concerns. Consequently, the instruments might require a broad scope. In that case, also in

* To be issued subsequently as document A/AC.254/4/Rev.1.

line with the relevant resolutions of the Economic and Social Council and the General Assembly, the possibility that the additional international legal instrument might be independent from the convention could not be excluded. There was a discussion on whether signature of or accession to the protocols would be possible without prior signature of or accession to the convention, the general preference being towards requiring prior signature of or accession to the convention. The Ad Hoc Committee deemed that it was more appropriate to discuss that issue, together with the question of reservations, when considering the relevant articles of the draft convention.

19. New versions of the draft protocol against illicit manufacturing of and trafficking in firearms, their parts and components and ammunition* and of the draft protocol against illegal trafficking in and transporting of migrants** would incorporate proposals submitted by Governments during the first session of the Ad Hoc Committee and would reflect comments made during that session.

20. The representative of the United States introduced the draft protocol to combat international trafficking in women and children supplementary to the United Nations Convention against Transnational Organized Crime (A/AC.254/4/Add.3). The representative of Argentina introduced draft elements for an agreement on the prevention, suppression and punishment of international trafficking in women and children, supplementary to the Convention against Transnational Organized Crime (A/AC.254/8). The observers for two non-governmental organizations made statements. The delegations of Argentina and the United States undertook to produce a combined text to serve as the basis for future consideration of the draft instrument by the Ad Hoc Committee.***

## V. Adoption of the report of the Ad Hoc Committee on its first session

21. At its 18th meeting, on 29 January 1999, the Ad Hoc Committee adopted the report on its first session (A/AC.254/L.1).

22. At the same meeting, the Ad Hoc Committee adopted the provisional agenda and organization of work for its second session, to be held in Vienna from 8 to 12 March 1999 (A/AC.254/L.1/Add.1).****

*Notes*

[1] Several representatives mentioned that the International Institute for Higher Studies in Criminal Sciences, during the informal preparatory meeting of the Ad Hoc Committee, held in Buenos Aires from 31 August to 4 September 1998, had offered to act as host to informal drafting groups to which the Ad Hoc Committee might wish to assign the preparation of texts related to specific issues covered under the draft Convention.

* To be issued subsequently as document A/AC.254/4/Add.2/Rev.1.

** To be issued subsequently as document A/AC.254/4/Add.1/Rev.1.

*** To be issued subsequently as document A/AC.254/4/Add.3/Rev.1.

**** To be issued subsequently as document A/AC.254/10.

# Annex I

## Attendance

### States

| | |
|---|---|
| Algeria | Mokhtar Reguieg, Faouzia Benmansour, Salah Francis El-Hamdi |
| Angola | Henrique Dos Santos, Fidelino Loy De Jesus Figueiredo, Ricardo Quicaxiamo, José Leitão Neves Bravo Da Costa, Filomena Da Conceição João |
| Argentina | Eugenio M. Curia, Ana Luisa Wirth-Schwind, Eduardo Bertoni |
| Australia | Geoffrey Dabb, Crispin Conroy, Roger Alan Neilson, Peter Guinn Scott, Helen Stylianou |
| Austria | Irene Freudenschuss-Reichl, Ferdinand Trautmannsdorf, Gregor Schusterschitz, Christian Ebner, Andrea Sandhacker, Ulrike Kathrein, Stefan Benner, Hans Haller, Andrea Jelinek, Walter Grosinger, Heinz Drobesch |
| Azerbaijan | Vaqif Sadiquov, Fuad Ismayilov |
| Belarus | Valyantsin Fisenka, Igor Shaladonau |
| Belgium | Michel Adam, Peter Martin, J. S. Jamart, Gerard Dive, Wouter Boucique, W. De Meyer |
| Bolivia | Jaime Niño De Guzmán, María Lourdes Espinoza Patiño |
| Brazil | Affonso Celso De Ouro-Preto, Jose Jorge Alcazar Almeida |
| Bulgaria | Ivan Naydenov, Traiko Spasov, Ivan Tishev |
| Burkina Faso | Lazare Gansore, Ougmane Traore |
| Canada | Keith Morrill, Alan Morgan, Jim Hayes, Jeannette Ackroyd, David Duinker, Sabine Nölke, Debra Normoyle, Erin McKey, Mark Gaillard |
| Chile | Osvaldo Puccio, Héctor Muñoz, Rosa Melendez, Gloria Navarrete-Heckmatt |
| China | Li Yanduan, Liu Yinghai, Zhai Jinrong, Sun Ang, Sun Ping, Zhang Yi, Gan Guodong, Tian Ni |
| Colombia | Carlos Holmes Trujillo Garcia, Fabiola Castillo, Enrique Celis, Maria Ximena Lombana, Carlos Rodriguez |
| Côte d'Ivoire | Mamadou Kone |
| Croatia | Mario Nobilo, Ranko Vilovic, Zeljko Horvatic, Zoran Nekic, Tihomir Kralj, Marijana Kujundzic |
| Cuba | Luis García Peraza, Pablo A. Rodríguez Vidal, Aurora Gramatges |
| Czech Republic | Marie Koštálová, Tomáš Buril, Jan Kohout |
| Denmark | Gite Hundahl, Carsten Krogh, Nicolai Jung, Susanne Topgaard, Michael Boolsen, Christian Strøyer, Jesper Hjortenberg |
| Ecuador | Patricio Palacios, Franklin Chávez, Juan F. Holguín |

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|---|---|
| Egypt | Mostafa El-Feki, Iskandar Gbattas, Abd El Azim Wazir, Aly Hegazy, Hisham Ahmed Sorour |
| Finland | Tom Grönberg, Jaakko Halttunen, Matti Joutsen, Tomi Vuori, Pertti Normia, Kari Eskola, Pia Rantala |
| France | Bérèngère Quincy, Eric Danon, Philippe Delacroix, Catherine Pignon, Michel Quille, Joël Sollier, François-Xavier Bourges, Catherine Thony, Alain Damais, Patrick Deunet, Thierry Leroy, Patrick Debaere, Philippe Caillol, Anne-Sylvie Delouvrier, Escadron Verisson |
| Gabon | Yolande Bike, Patrick Florentin Malekou |
| Georgia | Levan Mikeladze, Zurab Chapidze, Nikoloz Rtveliashvili |
| Germany | Karl Borchard, Michael Grotz, Hans Peter Plischka, Detlef Rein, Axel Werbke, Peter Kroemer, Albrecht Volkwein, Christian Drews, Martina Lapacz |
| Greece | Konstantinos Piperigos, Ioannis Aggelis, Konstantinos Matzoukas |
| Guatemala | Federico Urruela Prado, Sylvia Wohlers De Meie |
| Holy See | Mario Zenari, Augustin Vaz Guerrero. Raffaella Manon |
| Hungary | Tibor Tóth, György Eiselt, Zoltan Marki, Klára Breuer, Attila Zsigmond, Ilona Szuhay |
| India | Jayant Umranikar |
| Indonesia | Sapartini S. Kuntjoro-Jakti, Sadewo Joedo, Diar Nurbintoro, Larso Simbolon |
| Iran (Islamic Republic of) | Amir Zamaninia, Amir-Hossein Hosseini, Bahram Darvish Khadema |
| Ireland | Tony McDermottroe, Brian Lucas, Donacha O'Sullivan |
| Israel | Ehud Keinan, Michael Lotem-Panich |
| Italy | Vincenzo Manno, Umberto Leanza, Emanuele Pignatelli, Renato Castellani, Gioacchino Polimeni, Giusto Sciacchitano, Francesca Marcelli, Enrico Di Francesco, Alfredo Nunzi, Massimo Curcio, Luigi Sico, Vincenzo Delicato, Renato Ferraro, Giampaolo Bensaia, Giancarlo Olimbo, Massimo Di Marco, Corrado Carruba, Maria Grazia Giammarinaro, Tiziana Terribile, Fabio Marini |
| Japan | Kiyotaka Akasaka, Nobuaki Ito, Mikinao Kitada, Kenichi Suganuma, Goro Aoki, Taisuke Kanayama, Kohei Kishi, Keisuke Senta, Kei Umebayashi, Katsunori Imai, Nobuaki Eguchi, Yoshiyuki Ishiwata, Haruyuki Kamatani, Nobuhiro Watanabe, Kengo Yoshihara, Yasuaki Ikeda, Tsuyoshi Endo, Takuyo Awa |
| Kazakhstan | A. Akhmetov |
| Kuwait | Faisal Al-Ghais, Hamed Saleh Al-Othman, Zakaria Al-Ansari |
| Lebanon | Samir Hobeica, Elias Daoud, Georges Boustani, Michel Katra |
| Libyan Arab Jamahiriya | Said Abulaati, Faisal Elshaerri |

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| Luxembourg | Georges Santer, Jeannine Dennewald, Pierre Franck |
| Malta | Carmel Agius, Andrew Seychell |
| Mauritania | Abdallahi Ould Kebd |
| Mexico | Roberta Lajous, Luis Alfonso De Alba, Gilberto Landeros Briseño, José Humberto Castro Villalobos, Sergio Olivar Moctezuma, Victor Arriaga Weiss |
| Morocco | Abderrahim Benmoussa, Mina Tounsi, Abdellatif Saadi |
| Myanmar | Win Naing |
| Namibia | Lineekela J. Mboti, Simon M. Maruta |
| Netherlands | Hans Foerster, Michiel Bierkens, Marjorie Bonn, Jan Peek |
| New Zealand | Joan Mosley, Lucy Duncan |
| Niger | Souley Boubacar |
| Nigeria | Albeit Anopoechi, Abel Adelekun Ayoko, Mustapha Betara Aliyu |
| Norway | Helga Hernes, Hilde Indreberg, Gro Nystuen, Magnar Aukrust, Anne Folkvord, Gjermund Saether, Ola Rambjor Heide |
| Oman | Ahmed Said Al-Hasani, Yousef Ahmed Hamed Al Jabry |
| Pakistan | Shaukat Umer, Iffat Imran Gardezi |
| Panama | Jorge Enrique Halphen Pérez, Mirna P. De Perez Venero |
| Paraguay | Max Narváez Matto, María Cristina Acosta Alvarez, Ana Isabel Rodríguez |
| Peru | Gilbert Chauny, Luis Sandiga, Ruth Saif De Preperier, Manuel Alvarez |
| Philippines | Victoria S. Bataclan, Mary Anne A. Padua |
| Poland | Janusz Rydzkowski, Zdzisław Galicki, Michal Płachta, Mariusz Skowroński, Zbigniew Wrona, Beata Ziarkiewicz |
| Portugal | Álvaro Mendonça E Moura, Euclides Dâmaso Simões, Teresa Alves Martins, Cristina Pucarinho |
| Qatar | Ali Al-Khulaifi, Saleh Al-Meraikhi |
| Republic of Korea | Yuh Jae-hong, Chae Jung-sug, Lee Chang-jae, Hwang In-gyu, Lim Woong-soon, Che Dong-hwan, Lee Chul |
| Romania | Liviu Popescu, Florentina Voicu, Alina Dorobant |
| Russian Federation | Sergei N. Karev, Georgiy G. Machitidze, Mikhail S. Paleyev, Sergei N. Trofimyuk, Lyudmila N. Kurovskaya, Victor S. Dolmatov, Valentine I. Mikhailov, Anatoly V. Grinenko, Anatoly G. Radatchinski, Alexander V. Zinevitch, Alexander S. Gappoev |
| Saudi Arabia | Omar Mohammad Kurdi, Abdulrahman Al-Shamrany, Mohamed Naser Al-Owlah |
| Senegal | Mamadou Lamine Fofana, Amadou Diallo, Codé Mbengue |
| Singapore | Mathew Joseph, Ping Lin Yeow, Su Hoong Chang |

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|---|---|
| Slovakia | Zuzana Chudá, Lubomír Lubina, Cecília Kandráčová, Denisa Ivanová |
| Slovenia | Maja Prodan |
| South Africa | Peter Gastrow, L. Kok, M. A. Buys |
| Spain | Antonio Ortiz, Luis Calvo Merino, Marcos Vega, Valentín Dueñas, Francisco Javier Aparicio, Alvaro Trejo, Juan Antonio Gonzalez, Antonio Yébenes, José Antonio Mayoral |
| Sudan | Abubakr Salih Nur, Kureng Akuei Pac |
| Sweden | Örjan Landelius, Per Hedvall, Barbro Jönsson, Johan Nordenfelt, Johanna Peyron, Elin Sandberg |
| Switzerland | Marianne Von Grünigen, Urs Breiter, Anita Marfurt, Jérôme Candrian, Lorenza Scomaienghi Rossini, Christoph Haeni, Stefano Toscano, Stephan Arnold, Jörg Köhler, Christoph Häni, |
| Syrian Arab Republic | Kais El-Sheich, Jassem El-Mohammed |
| Thailand | Udom Raksiltham, Visanu Prasattungosoth, Morokot Sriswasdi |
| The former Yugoslav Republic of Macedonia | Ruzica Zanteva Angelova |
| Tunisia | Nabil Ammar, Emma Lazoughli, Abdelhamid Ben Chickh, Abderrazak Mansour |
| Turkey | Yasar Yakis, A. Asim Arar, Ates Hasan Sözen, M. Aydin Özbay, Nilüfer Erdem Kaygisiz |
| Ukraine | Mykola Makarevych, Yevgen Strekalov, Rostyslav Tronenko, Mykola Gryzschuk, Vasyl Gubko, Viktoria Kuvshynnykova |
| United Arab Emirates | Mohammed Saeed Al Kindi, Ayad Al Yasiri |
| United Kingdom of Great Britain and Northern Ireland | Godfrey Stadlen, John Freeman, Richard Bradley, Peter Storr, Ruth Goodwin, Geoffrey Cole, David Lusher, Christopher Ian Perry, Doug Dalziel, Graham Widdecombe, David Wilson, Neil Clowes, John Barlow, Steve Walsh |
| United States of America | Jonathan Winer, Rob Boone, Laura Kennedy, Jeffrey Bullwinkel, Mary Helen Carlson, Sara Scott, Danny Glaser, Joseph Gordon, Kenneth Harris, Bridget Neill, Arthur Norton, Raul Pedrozo, Enrique Perez, Kenneth Propp, James Puleo, Herbert Traub, James Finckenauer |
| Uruguay | Jorge Tálice, Fructuoso Pittaluga-Fonseca, Elena Fajardo, Roberto Melgar |
| Venezuela | Demetrio Boersner, Kidder Salazar |
| Viet Nam | Nguyen Xuan Hong, Pham Hong Nga, |
| Zambia | Alex Chilufya, Solomon Jere |
| Zimbabwe | Phelekezela Mphoko |

**Entities represented by observers**

Palestine

**United Nations Secretariat units**

Economic Commission for Europe, Department for Disarmament Affairs, Department of Economic and Social Affairs, Office of the United Nations High Commissioner for Refugees, United Nations Office at Vienna and Office for Drug Control and Crime Prevention

**United Nations bodies and affiliated institutes**

United Nations Development Programme, United Nations International Research and Training Institute for the Advancement of Women, Naif Arab Academy for Security Sciences, International Centre for Criminal Law Reform and Criminal Justice Policy, International Institute of Higher Studies in Criminal Sciences, National Institute of Justice

**Specialized agencies and other organizations in the United Nations system**

United Nations Educational, Scientific and Cultural Organization, World Bank, International Maritime Organization, International Atomic Energy Agency

**Other intergovernmental organizations**

Asian-African Legal Consultative Committee, Council of Europe, Council of the European Union, European Commission, Europol, International Centre for Migration Policy Development, International Criminal Police Organization, International Organization for Migration, League of Arab States, Sovereign Military Order of Malta, Organization for Security and Co-operation in Europe, Secretariat of the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies

**Non-governmental organizations**

*General consultative status*:

International Chamber of Commerce, International Council of Women, Zonta International

*Special consultative status*:

Amnesty International, Anti-Slavery International, Asia Crime Prevention Foundation, Association for the Study of the World Refugee Problem, International Association of Judges, International Commission of Jurists, International Council on Alcohol and Addictions, International Federation of University Women, International Human Rights Law Group, International Institute of Humanitarian Law, Italian Centre of Solidarity, National Council of German Women's Organizations—Federal Union of Women's Organizations and Women's Groups of German Associations, E. V., Pax Romana (International Catholic Movement for Intellectual and Cultural Affairs) (International Movement of Catholic Students)

*Roster*:

International Movement against All Forms of Discrimination and Racism, National Rifle Association of America/Institute for Legislative Action, Sporting Shooters' Association of Australia

# Annex II

## List of documents before the Ad Hoc Committee at its first session

| *Document symbol* | *Title or description* |
|---|---|
| A/AC.254/1 | Annotated provisional agenda and proposed organization of work |
| A/AC.254/2 | Main points of discussion of the first session of the informal working group established to assist the Chairman of the Ad Hoc Committee on the Elaboration of the Convention against Transnational Organized Crime (the informal group of the "Friends of the Chair"), held in Rome on 17 and 18 July 1998 |
| A/AC.254/3 | Report of the informal preparatory meeting of the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime, held in Buenos Aires from 31 August to 4 September 1998 |
| A/AC.254/4 | Draft United Nations Convention against Transnational Organized Crime |
| A/AC.254/4/Add.1 | Draft elements for an international legal instrument against illegal trafficking and transport of migrants: proposal submitted by Austria and Italy |
| A/AC.254/4/Add.2 | Draft protocol against the illicit manufacturing of and trafficking in firearms, ammunition and other related materials, supplementary to the United Nations Convention against Transnational Organized Crime: proposal submitted by Canada |
| A/AC.254/4/Add.3 | Draft protocol to combat international trafficking in women and children, supplementary to the United Nations Convention on Transnational Organized Crime: proposal submitted by the United States of America |
| A/AC.254/5 | Proposals and contributions received from Governments (Canada, France, France and Sweden, Germany, Switzerland, Tunisia, Turkey, United Kingdom of Great Britain and Northern Ireland and United States of America) |
| A/AC.254/5/Add.1 and Corr.1 | Proposals and contributions received from Governments (Japan, Mexico, United Kingdom of Great Britain and Northern Ireland and United States of America) |
| A/AC.254/5/Add.2 | Comments and proposals received from Governments (Netherlands) |
| A/AC.254/6 | Report on the third session of the informal working group established to assist the Chairman of the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime, held in Vienna from 5 to 6 November 1998 |

| *Document symbol* | *Title or description* |
|---|---|
| A/AC.254/7 | Ongoing international initiatives related to the elaboration of an international legal instrument against illicit manufacturing of and trafficking in firearms, their parts and components and ammunition |
| A/AC.254/8 | Draft elements for an agreement on the prevention, suppression and punishment of international trafficking in women and children, supplementary to the Convention against Transnational Organized Crime: proposal submitted by Argentina |
| A/AC.254/CRP.1 | Inter-American Convention against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives and Other Related Materials |
| A/AC.254/CRP.2 | Inter-American Convention on International Traffic in Minors |
| A/AC.254/CRP.3 | International Maritime Organization circular on interim measures for combating unsafe practices associated with the trafficking or transport of migrants by sea |
| A/AC.254/CRP.4 | Comments of the World Customs Organization on the draft protocol against the illicit manufacturing of and trafficking in firearms, ammunition and other related materials |
| A/AC.254/CRP.5 | Comments of Kuwait on the draft convention against transnational organized crime |
| A/AC.254/CRP.6 | Background document submitted by South Africa on the draft protocol against the illicit manufacturing of and trafficking in firearms, ammunition and other related material as part of the proposed Convention on Transnational Organized Crime |
| A/AC.254/CRP.7 | Indicative timetable for the work of the Ad Hoc Committee in 1999 |
| A/AC.254/L.1 * | Draft report |
| A/AC.254/L.1/Add.1 | Draft provisional agenda and proposed organization of work for the second session of the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime |
| A/AC.254/L.1/Add.2 | Revised draft United Nations Convention against Transnational Organized Crime |
| A/AC.254/L.2 | Proposals and contributions received from Governments on the draft United Nations Convention against Transnational Organized Crime (Canada and Colombia) |
| A/AC.254/L.3 | Proposals and contributions received from Governments on the draft United Nations Convention against Transnational Organized Crime (Netherlands) |
| A/AC.254/L.4 | Proposals and contributions received from Governments on the draft United Nations Convention against Transnational Organized Crime (United Kingdom of Great Britain and Northern Ireland) |

| *Document symbol* | *Title or description* |
|---|---|
| A/AC.254/L.5 | Proposals and contributions received from Governments on the draft United Nations Convention against Transnational Organized Crime (Colombia) |
| A/AC.254/L.6 | Proposals and contributions received from Governments on the draft United Nations Convention against Transnational Organized Crime (Kuwait) |
| A/AC.254/L.7 | Proposals and contributions received from Governments on the draft United Nations Convention against Transnational Organized Crime (Mexico) |
| A/AC.254/L.8 | Proposals and contributions received from Governments on the draft United Nations Convention against Transnational Organized Crime (Mexico) |
| A/AC.254/L.9 | Proposals and contributions received from Governments on the draft United Nations Convention against Transnational Organized Crime (Australia) |
| A/AC.254/L.10 | Amendment submitted by the Office of the United Nations High Commissioner for Refugees concerning safeguards for refugees and/or persons in need of international protection threatened by extradition in the context of article 10 of the draft United Nations Convention against Transnational Organized Crime |
| A/AC.254/L.11 | Proposals and contributions received from Governments on the draft United Nations Convention against Transnational Organized Crime (United States of America) |

United Nations

A/AC.254/10

General Assembly

Distr.: General
10 February 1999

Original: English

**Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime**
Second session
Vienna, 8-12 March 1999

# Annotated provisional agenda and proposed organization of work

## Provisional agenda

1. Opening of the second session of the Ad Hoc Committee.
2. Adoption of the agenda and organization of work.
3. Consideration of the draft United Nations Convention against Transnational Organized Crime, with particular emphasis on articles 1-3.
4. Consideration of the additional international legal instrument against trafficking in women and children.
5. Adoption of the report of the Ad Hoc Committee on its second session.

## Annotations

### 1. Opening of the second session of the Ad Hoc Committee

The Meeting will be convened on Monday, 8 March 1999, at 10 a.m.

### 2. Adoption of the agenda and organization of work

The provisional agenda and proposed organization of work of the Ad Hoc Committee at its second session were endorsed by the Ad Hoc Committee at its first session, held in Vienna from 19 to 29 January 1999.

The resources available to the Ad Hoc Committee at its second session permit the holding of two plenary meetings per day with simultaneous interpretation in the six official languages of the United Nations.

V.99-80861 (E)

### 3. Consideration of the draft United Nations Convention against Transnational Organized Crime, with particular emphasis on articles 1-3

At its first session, the Ad Hoc Committee concluded a first reading of articles 1-23 of the draft United Nations Convention against Transnational Organized Crime (as contained in document A/AC.254/4). The Bureau of the Ad Hoc Committee recommended that the Ad Hoc Committee concentrate at its second session on the negotiation of the text of articles 1-3 of the draft Convention, dealing with the objectives and scope of application of the Convention and definitions. That recommendation was made on the understanding that, should the Committee complete the drafting of those articles with time remaining at its second session, it would proceed to the negotiation of as many other articles of the draft Convention as possible. The Ad Hoc Committee decided, at its first session, to consider articles 4, 4 *bis*, 7 and 8, on money-laundering, confiscation and transparency of transactions, at its third session, scheduled to be held in Vienna in April for at least three days during the eighth session of the Commission on Crime Prevention and Criminal Justice. In view of that decision and in the event of early conclusion of the negotiation of articles 1-3 of the draft Convention, the Ad Hoc Committee may wish to proceed with the negotiation of articles 5, 9 and subsequent.

**Documentation**

Revised draft United Nations Convention against Transnational Organized Crime (A/AC.254/4/Rev.1)

Proposals and contributions received from Governments (A/AC.254/5/Add.3)

### 4. Consideration of the additional international legal instrument against trafficking in women and children

In its resolution 53/111 of 9 December 1998, the General Assembly decided to establish an open-ended intergovernmental ad hoc committee for the purpose, *inter alia*, of discussing the elaboration, as appropriate, of international instruments addressing trafficking in women and children, combating the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition, and illegal trafficking in and transporting of migrants, including by sea; and, in carrying out that work, to take into account, *inter alia*, Economic and Social Council resolutions 1998/18, 1998/19 and 1998/20 of 28 July 1998.

In its resolution 53/114 of 9 December 1998, the General Assembly called upon the Ad Hoc Committee to devote attention to the drafting of the main text of the convention, as well as, as appropriate, of international instruments addressing trafficking in women and children, combating the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition, and illegal trafficking in and transporting of migrants, including by sea.

At the first session of the Ad Hoc Committee, the representative of the United States of America introduced the draft protocol to combat international trafficking in women and children supplementary to the United Nations Convention against Transnational Organized Crime (A/AC.254/4/Add.3). The representative of Argentina introduced draft elements for an agreement on the prevention, suppression and punishment of international trafficking in women and children, supplementary to the Convention against Transnational Organized Crime (A/AC.254/8). The delegations of Argentina and the United States undertook to produce a combined text to serve as the basis for future consideration of the draft instrument by the Ad Hoc Committee.

**Documentation**

Revised draft international legal instrument against trafficking in women and children: proposal submitted by Argentina and the United States of America (A/AC.254/4/Add.3/Rev.1)

**Background documents**

Inter-American Convention on International Traffic in Minors (A/AC.254/CRP.2)

**5. Adoption of the report of the Ad Hoc Committee on its second session**

The Ad Hoc Committee is to adopt a report on its second session, the draft of which will be prepared by the Rapporteur.

In its resolution 53/111, the General Assembly requested the Ad Hoc Committee to submit a progress report to the Commission on Crime Prevention and Criminal Justice at its eighth session. The progress report will comprise a summary of the reports of the Ad Hoc Committee on its first and second sessions and will be accompanied by the revised version of the draft Convention and other international legal instruments.

## Annex

### Proposed organization of work of the second session of the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime, to be held in Vienna from 8 to 12 March 1999

| *Date* | *Time* | *Item* | *Plenary* |
|---|---|---|---|
| Monday, 8 March | 10 a.m.-1 p.m. | 1 | Opening of the second session of the Ad Hoc Committee |
| | | 2 | Adoption of the agenda and organization of work |
| | | 3 | Consideration of the draft United Nations Convention against Transnational Organized Crime, with particular emphasis on articles 1-3 |
| | 3 p.m.-6 p.m. | 3 | Continuation of the discussion |
| Tuesday, 9 March - Thursday, 11 March | 10 a.m.-1 p.m. and 3 p.m.-6 p.m. | 3 | Continuation and conclusion of the discussion |
| Friday, 12 March | 10 a.m.-1 p.m. | 4 | Consideration of the additional international legal instrument against trafficking in women and children |
| | 3 p.m.-6 p.m. | 4 | Continuation and conclusion of the discussion |
| | | 5 | Consideration and adoption of the report of the Ad Hoc Committee on its second session |

United Nations A/AC.254/11

General Assembly

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**Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime**
Third session
Vienna, 28 April-3 May 1999

# Report of the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime on its second session, held in Vienna from 8 to 12 March 1999

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V.99-82656 (E)

# I. Introduction

1. The Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime was established by the General Assembly in its resolution 53/111 of 9 December 1998. In its resolution 53/114 of 9 December 1998, the Assembly called upon the Ad Hoc Committee to devote attention to the drafting of the main text of the Convention, as well as of international instruments addressing trafficking in women and children, combating the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition, and illegal trafficking in and transporting of migrants, including by sea.

# II. Organization of the session

## A. Opening of the session

2. The Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime held its second session in Vienna from 8 to 12 March 1999. The Ad Hoc Committee held 10 meetings.

3. At its first session, held in Vienna from 19 to 29 January 1999, the Ad Hoc Committee had decided to devote attention at its second session to the drafting of articles 1-3 of the Convention and to carry out a first reading of the additional international legal instrument on trafficking in women and children.

4. The second session of the Ad Hoc Committee was opened by its Chairman, who stressed the importance of maintaining the constructive spirit of negotiation that had been demonstrated at the first session. The Chairman also referred to a symposium on the draft Convention, organized by the Italian Senate and the Office for Drug Control and Crime Prevention of the Secretariat, held in Rome on 26 and 27 February 1999. The Chairman noted that the symposium had been attended by a number of government ministers from various regions and had afforded an opportunity to reiterate the political commitment of States to the draft Convention and to the conclusion of the negotiating process by the year 2000.

5. The representative of Japan announced that his Government had earmarked a voluntary contribution to the United Nations Crime Prevention and Criminal Justice Fund, amounting to $200,000, in order to facilitate the drafting of the Convention. The representative of Japan stated that his Government would consult with the Secretariat regarding the appropriate use of its contribution and expressed the hope that other Governments would also consider making similar voluntary contributions. The Chairman and the representatives of many States expressed their appreciation to the Government of Japan for its generosity.

6. At the first session of the Ad Hoc Committee, several delegations had expressed concern about the accuracy of the terms used in the translation of documents into some of the official languages and had recommended that the Secretariat undertake the compilation of a glossary of terms. At the second session, the Secretariat announced that the compilation of the glossary was under way, with the support of the Translation Service. The Secretariat intended to distribute a first draft of the glossary to the Ad Hoc Committee at its third session. States could then review it and submit their input to the Secretariat with a view to finalizing the glossary by the fourth session. The glossary would ultimately be included in the official records of the Ad Hoc Committee.

## B. Attendance

7. The second session of the Ad Hoc Committee was attended by representatives of 95 States. Also attending the second session were observers for entities maintaining permanent observer missions to the United Nations, organizations of the United Nations system, institutes of the United Nations Crime Prevention and Criminal Justice Programme network, intergovernmental organizations and non-governmental organizations. A list of participants is contained in annex I to the present report.

## C. Adoption of the agenda and organization of work

8. At its 19th meeting, on 8 March 1999, the Ad Hoc Committee adopted the following agenda for its second session:

1. Opening of the second session of the Ad Hoc Committee.
2. Adoption of the agenda and organization of work.

3. Consideration of the draft United Nations Convention against Transnational Organized Crime, with particular emphasis on articles 1-3.

4. Consideration of the additional international legal instrument against trafficking in women and children.

5. Adoption of the report of the Ad Hoc Committee on its second session.

### D. Documentation

9. At its second session, the Ad Hoc Committee had before it, in addition to the documents prepared by the Secretariat, documents containing proposals and contributions submitted by the Governments of Argentina, Australia, Austria, Canada, Colombia, Cuba, Japan, Kuwait, Mexico, Poland, the Russian Federation, Singapore, the United Arab Emirates, the United States of America and Uruguay, and by the Council of the European Union. The list of documents is contained in annex II.

## III. Discussion on the draft Convention

10. The Ad Hoc Committee based its work on a document containing the draft United Nations Convention against Transnational Organized Crime (A/AC.254/4/Rev.1) and on proposals and contributions submitted by Governments (A/AC.254/5/Add.3 and 4). The Chairman noted that the revised text contained in document A/AC.254/4/Rev.1 had been the result of discussions and consultations held during the first session.

11. The Ad Hoc Committee concluded its discussion on article 1. The agreed text was included in the new version of the draft Convention.*

12. In discussing article 2, the Ad Hoc Committee agreed that elements from paragraph 2 of the previous version could be useful to it in its consideration of other provisions, such as those pertaining to mutual legal assistance. Paragraph 2 of article 2 of the previous version reads as follows:

"[2. Among the circumstances that may be taken into account in deciding whether there are reasonable grounds to believe that a criminal organization is involved are the following:

"(a) The nature of the offence;

"(b) The transnational character of the offence;

"(c) Whether money-laundering is involved; and

"(d) Whether the offence required significant planning or means for its commission.]"

13. The Chairman proposed that the list of offences included in paragraph 3 of article 2 be removed from the draft text of the Convention and that, as a compromise solution, a list of offences, which could be either indicative or exhaustive, such as the list originally contained in paragraph 3 of article 2, could be included either in an annex to the Convention or in the *travaux préparatoires*. Those proposals were accepted by the Ad Hoc Committee. The list from paragraph 3 of article 2 is contained in an attachment to the revised version of the draft Convention.

14. The above list would need to be supplemented with proposals from States. The Chairman called upon all interested States to consult with each other in order to reach agreement on the contents of the list. A list was informally circulated by some delegations at the second session and is included in the attachment to the revised version of the draft Convention.

15. Some delegations expressed their preference for including the list in an annex to the Convention. Others expressed their preference for no list at all.

16. The Ad Hoc Committee discussed articles 2 *bis* and 3. The comments and proposals made during the second session are reflected in the revised version of the draft Convention.

17. The Ad Hoc Committee also completed a first reading of articles 24 to 30 of the draft Convention. The comments and proposals made during the second session are reflected in the revised text of the draft Convention.

18. The Ad Hoc Committee requested the Secretariat to carry out an analytical study on provisions of national laws relevant to the Convention concerning offences punishable by deprivation of liberty, with an indication of the number of years of imprisonment. The study should be based on information to be solicited from Member States. Member

* To be issued subsequently as document A/AC.254/4/Rev.2.

States would also be asked to indicate whether their legislation qualified offences as serious and, if so, what criteria were used and which crimes were considered serious. Member States should submit the information before 30 April 1999 with a view to the study being completed and made available to the Ad Hoc Committee at its fourth session.

## IV. Discussion on the additional international legal instrument on trafficking in women and children

19. The delegate of Argentina introduced amendments to the revised draft Protocol to Prevent, Suppress and Punish Trafficking in Women and Children, supplementary to the United Nations Convention against Transnational Organized Crime (A/AC.254/L.17).

20. The Ad Hoc Committee based its discussion on a document containing the revised draft Protocol to Prevent, Suppress and Punish Trafficking in Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime (A/AC.254/4/Add.3/Rev.1). That text was a proposal submitted by Argentina and the United States of America pursuant to the commitment those States had made at the first session of the Ad Hoc Committee. The Ad Hoc Committee carried out a first reading of articles 1 and 2 of the draft Protocol. The comments and proposals made during the second session are reflected in the revised text of the draft Protocol.*

21. The observers for the International Labour Organization and two non-governmental organizations made statements.

22. During the first reading of the draft Protocol, there was discussion on whether the Protocol would address trafficking in women and children or trafficking in persons. The Secretariat was requested to clarify the question of whether, by considering trafficking in persons, the Ad Hoc Committee would be departing from the mandate given to it by the General Assembly and, if that were the case, whether it would be competent to do so. The Secretariat undertook to explore the matter and to inform the Ad Hoc Committee of its findings.

## V. Adoption of the report of the Ad Hoc Committee on its second session

23. At its 28th meeting, on 12 March 1999, the Ad Hoc Committee adopted the report on its second session (A/AC.254/L.18).

24. At the same meeting, the Ad Hoc Committee approved the provisional agenda and proposed organization of work for its third session, to be held in Vienna from 28 April to 3 May 1999 (A/AC.254/L.18/Add.1).** It was also decided that at its third session it would devote one day to the consideration of the international legal instrument addressing illicit manufacturing of and trafficking in firearms, their parts and components and ammunition.

* To be issued subsequently as document A/AC.254/4/Add.3/Rev.2.

** To be issued subsequently as document A/AC.254/12.

# Annex I

## List of participants

**States**

| | |
|---|---|
| *Afghanistan* | Farid A. Amin |
| *Algeria* | Mokhtar Reguieg, Faouzia Benmansour, Salah Francis El-Hamdi |
| *Angola* | José Leitão Neves Bravo Da Costa |
| *Argentina* | Eugenio M. Curia, Ana Luisa Wirth de Schwind, Gustavo de Paoli, Daniel E. Amigo, Eduardo Bertoni |
| *Armenia* | Ashot Kocharian |
| *Australia* | Steven Marshall, Peter Scott, Helen Stylianou |
| *Austria* | Irene Freudenschuss-Reichl, Gregor Schusterschitz, Andrea Sandhacker, Ulrike Kathrein, Wolfgang Pekel, Karl Lesjak, Hans Haller |
| *Azerbaijan* | Vaqif Sadykhov, Fuad Ismayilov |
| *Belarus* | Valyantsin Fisenka, Igor Shaladonau |
| *Belgium* | Michel Adam, Peter Martin, J. S. Jamart, Gérard Dive, Wouter Boucique, W. De Meyer |
| *Bolivia* | Jaime Niño de Guzmán, María Lourdes Espinoza Patiño |
| *Brazil* | Oswaldo E. B. Portella, José Jorge Alcazar Almeida |
| *Bulgaria* | Ivan Naydenov, Traiko Spasov |
| *Burkina Faso* | Ousmane Traore |
| *Burundi* | Salvator Doyidoyi |
| *Canada* | Keith Morrill, Alan Morgan, Kim Prost |
| *Chile* | Osvaldo Puccio Huidobro, Gustavo Villalobos, Gloria Navarrete-Heckmatt |
| *China* | Xue Hanqin, Liu Yinghai, Diao Mingsheng, Zhai Jinrong, Bai Ping, Gao Xuwen, Wu Haiwen |
| *Colombia* | Carlos Holmes Trujillo García, Farid Samir Benavides, Enrique Celis Duran, Carlos Rodríguez Bocanegra |
| *Costa Rica* | Stella Aviram Newman |
| *Côte d'Ivoire* | Mamadou Kone |
| *Croatia* | Mario Nobilo, Ranko Vilović, Zeljko Horvatić, Zoran Nekić, Marijana Kujundžić |
| *Cuba* | Luis García Peraza, Aurora Gramatges, Eliseo Zamora Hernández |

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|---|---|
| *Czech Republic* | Tomáš Buril, Jan Kohout |
| *Denmark* | Gitte Hundahl, Nicolai Jung, Michael Boolsen, Carsten Krogh |
| *Ecuador* | Patricio Palacios, Juan F. Holguín |
| *Egypt* | Mostafa Elfeki, Iskandar Ghattas, Hisham Ahmed Sorour |
| *Finland* | Tom Grönberg, Jaakko Halttunen, Matti Joutsen, Reijo Pöyhönen, Pia Rantala |
| *France* | Bérèngère Quincy, Philippe Delacroix, Laurent Paillard, Michel Quille, Bruno Savoye, Anne-Sylvie Delouvrier, Joël Sollier, Anne Delahaie, Jean-Louis Verisson, Patrick Deunet, Catherine Thony |
| *Gabon* | Yolande Bike |
| *Georgia* | Levan Mikeladze, Irakli Dugashvili, Zurab Chapidze |
| *Germany* | Karl Borchard, Michael Grotz, Hans-Peter Plischka, Marco Düerkop, Albrecht Volkwein |
| *Greece* | Ioannis Angelis, Konstantinos Piperigos, Constantinos Matzoukas |
| *Holy See* | Mario Zenari, Augustin Vaz Guerrero, Raffaella Manoni |
| *Hungary* | Tibor Tóth, György Eiselt, Sándor Virág, Zoltán Márki, Klára Breuer, Attila Zsigmond, Andrea Igazi |
| *India* | Kamal Kumar, Jayant Umranikar, P. C. Rastogi, S. C. Mathur, P. K. Choudhary |
| *Indonesia* | Sapartini S. Kuntjoro Jakti, Sadewo Joedo, Diar Nurbintoro, Larso Simbolon |
| *Iran (Islamic Republic of)* | Amir Hossein Zamaninia, Saeid Faryabi, Bahram Darvish Khadem |
| *Ireland* | Tony McDermottroe, Brian John Lucas |
| *Italy* | Vincenzo Manno, Renato Castellani, Gioacchino Polimeni, Massimo Curcio, Giusto Sciacchitano, Francesca Marcelli, Ennio Di Francesco, Corrado Carrubba, Alfredo Nunzi |
| *Japan* | Kiyoshi Koinuma, Mamoru Miura, Keisuke Senta, Kei Umebayashi, Katsunori Imai, Tsuyoshi Endo, Junya Osamura, Toshiaki Takahashi, Nobuhiro Watanabe, Kengo Yoshihara |
| *Jordan* | Mazen Armouti, Leena Al-Hadid |
| *Kazakhstan* | A. Akhmetov |
| *Kuwait* | Faisal Al-Ghais, Hamed Saleh Al-Othman, Zakaria Al-Ansari, Jasern Al-Budaiwi |
| *Kyrgyzstan* | Kamil Baialinov, Ainura Davletova |
| *Lebanon* | Samir Hobeica, Michel Katra |
| *Libyan Arab Jamahiriya* | Said Abulaati, Faisal Elshaeri |
| *Luxembourg* | Georges Santer, Jeannine Dennewald, Pierre Franck |
| *Madagascar* | Maurice Randrianame |

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|---|---|
| *Malaysia* | Melanie Leong Sook Lei, Ahmad Anwar Adnan |
| *Mexico* | Roberta Lajous Vargas, Luís Alfonso de Alba, Gilberto Landeros Briseño, José Humberto Castro Villalobos, Sergio Olivar Moctezuma, Victor Arriaga Weiss |
| *Morocco* | Abderrahim Benmoussa, Abdellatif Saadi, M. Loualladi |
| *Netherlands* | Hans Förster, Marjorie Bonn, Jan Peek, Michael Bierkens |
| *Namibia* | Simon M. Maruta |
| *New Zealand* | Lucy Duncan |
| *Nicaragua* | Suyapa Padilla Tercero |
| *Nigeria* | Albert Azubogu Anopuechi, Abel Adelekun Ayoko, L. P. Egopija |
| *Norway* | Hilde Indreberg, Gjermund Saether, Ola Rambjør Heide |
| *Oman* | Said Nasser Al-Siyabi, Ahmed Said Al-Hasani, Yousuf A. H. Al-Jabry |
| *Pakistan* | Shaukat Umer, Ross Masud, Iffat Imran Gardezi |
| *Panama* | Jorge Enrique Halphen Pérez, Mirna P. de Perez Venero |
| *Paraguay* | María Cristina Acosta Alvarez, Ana Isabel Rodríguez |
| *Peru* | Gilbert Chauny de Porturas Hoyle, Ruth Saif de Preperier, Manuel Alvarez Espinal |
| *Philippines* | Jose Zaide, Romeo L. Cairme, Victoria S. Bataclan, Anselmo S. Avenido Jr., Miguel G. Coronel, Mary Ann A. Padua, Nelia Sancho |
| *Poland* | Janusz Rydzkowski, Mariusz Skowroński, Zbigniew Wrona, Zdzisław Galicki, Michał Płachta, Beata Ziorkiewicz |
| *Portugal* | Alvaro José da Costa Mendonça e Moura, Euclides Dâmaso Simões, Maria do Carmo Dacosta, Teresa Alves Martins, Cristina Pucarinho |
| *Qatar* | Ali Essa A. Al-Khulaifi, Salem Sager S. Al-Meraikhi |
| *Republic of Korea* | Chung Dal-ho, Yuh Jae-hong, Chae Jung-sug, Hwamg In-gyu, Che Dong-hwan, Lee Chul |
| *Romania* | Alina Dorobant, Adrian Vierita |
| *Russian Federation* | Sergei N. Karev, Ludmila N. Kurovskaya, Igor L. Smirnov, Victor S. Dolmatov, Valentine I. Mikhailov, Anatoly V. Grinenko, Igor G. Lukyanov, Anatoli G. Radatchinski, Alexander V. Zinevich |
| *Rwanda* | Johnston Busingye |
| *Saudi Arabia* | Omar Mohammed Kurdi, A. M. Al-Ghamdi, M. S. Al-Dijan, A. A. Al-Yousef, A. H. Al-Shamrani, F. N. Al-Menna, M. N. Al-Aula, M. M. Al-Saiari, S. G. Alrachach |
| *Senegal* | Mamadou Lamine Fofana, Amaolou Diallo |
| *Sierra Leone* | Umaru Bundu Wurie, W. Breitenthaler |

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| *Singapore* | Hian Sun Ong, Danielle Ping Lin Yeow |
| *Slovakia* | Alojz Némethy, Zuzana Chudá, Denisa Ivanová, Metod Špaček |
| *Slovenia* | Robert Basej |
| *South Africa* | N. J. Mxakato-Diseko, P. C. Jacobs, G. Buys, Peter Gastrow, N. P. Notutela |
| *Spain* | Antonio Ortíz García, Marcos Vega, Valentín Dueñas, Francisco Javier Aparicio, Alvaro Trejo, Marceliano Gutiérrez, Juan González, Antonio Yébenes, Víctor Sancha |
| *Sudan* | Abubakr Salih Nur, Kureng Akuei Pac |
| *Sweden* | Örjan Landelius, Per Hedvall, Barbro Jönsson, Erika Hemtke |
| *Switzerland* | Peter Müller, Urs Breiter, Anita Marfurt, Olivier Thormann |
| *Syrian Arab Republic* | Riad Siage, Nadra Sayaf |
| *Thailand* | Sorayouth Prompoj, Sukho Piromnam, Wanchai Roujanavong, Morakot Sriswasdi |
| *The former Yugoslav Republic of Macedonia* | Ognen Maleski, Margarita Trajkova, Ruzica Zanteva Angelova |
| *Tunisia* | Abdelaziz Chaabane, Nabil Ammar, Emma Lazoughli, Abdelhamid Ben Cheikh, Abderrazak Mansour |
| *Turkey* | Yasar Yakis, Muzaffer Erkan, A. Asim Arar, M. Aydin Özbay, Nilüfer Erdem Kaygisiz |
| *Ukraine* | Mykola P. Makarevych, Yevgen Strekalov, Rostyslav Tronenko, Serhyi Sokolov, Vasyl Gubko, Viktoria Kuvshynnykova |
| *United Arab Emirates* | Abdul Rahim Yousef Al Awadi, Mohammed Mahmoud Al Kamali, Ahmed Al Dosari, Ayad Al-Yasiri |
| *United Kingdom of Great Britain and Northern Ireland* | Godfrey Stadlen, John Freeman, Geoffrey Cole, David Lusher, Ruth Goodwin, Neil Clowes |
| *United States of America* | Rob Boone, Laura Kennedy, Kenneth Harris, Mary Helen Carlson, James Puleo, Thomas Burrows, Herbert Traub |
| *Uruguay* | Jorge Tálice, Fructuoso Pittaluga-Fonseca, Elena Fajardo |
| *Venezuela* | Demetrio Boersner, Kidder Salazar |
| *Yemen* | Faisal Fadhel M. Hassan, Nageeb Ismail Ali |
| *Zimbabwe* | Phelekezela Mphoko |

**Entities represented by observers**

Palestine

**United Nations Secretariat units**

Office of the United Nations High Commissioner for Human Rights, Office for Drug Control and Crime Prevention

**United Nations bodies and affiliated institutes**

Office of the United Nations High Commissioner for Refugees, International Institute of Higher Studies in Criminal Sciences, Raoul Wallenberg Institute of Human Rights and Humanitarian Law

**Specialized agencies and other organizations of the United Nations system**

International Labour Organization, United Nations Educational, Scientific and Cultural Organization

**Other intergovernmental organizations**

Commonwealth Secretariat, Council of Arab Ministers of the Interior, Council of the European Union, Customs Cooperation Council, European Commission, Europol, International Centre for Migration Policy Development, International Criminal Police Organization, International Organization for Migration, League of Arab States, Secretariat of the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies, Sovereign Military Order of Malta

**Non-governmental organizations**

*General consultative status*:

International Council of Women, Zonta International

*Special consultative status*:

Amnesty International, Asia Crime Prevention Foundation, Association for the Study of the World Refugee Problem, Baha'i International Community, Caritas Internationalis, Coalition against Trafficking in Women, European Women's Lobby, International Association of Judges, International Council on Alcohol and Addictions, International Federation of University Women, International Human Rights Law Group, International Institute of Humanitarian Law, Institute of Inter-Balkan Relations, International Real Estate Federation, Italian Centre of Solidarity, National Council of German Women's Organizations—Federal Union of Women's Organizations and Women's Groups of German Associations, E. V., Pax Romana (International Catholic Movement for Intellectual and Cultural Affairs) (International Movement of Catholic Students), World Society of Victimology

*Roster*:

International Movement against All Forms of Discrimination and Racism, Japan Federation of Bar Associations

# Annex II

## List of documents before the Ad Hoc Committee at its second session

| *Symbol* | *Title or description* |
|---|---|
| A/AC.254/4/Rev.1 | Revised draft United Nations Convention against Transnational Organized Crime |
| A/AC.254/4/Add.3/Rev.1 | Revised draft Protocol to Prevent, Suppress and Punish Trafficking in Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime: proposal submitted by Argentina and the United States of America |
| A/AC.254/5/Add.3 and 4 | Proposals and contributions received from Governments |
| A/AC.254/9 | Report of the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime on its first session, held in Vienna from 19 to 29 January 1999 |
| A/AC.254/10 | Annotated provisional agenda and proposed organization of work |
| A/AC.254/L.12 | Kuwait: amendments to the draft United Nations Convention against Transnational Organized Crime |
| A/AC.254/L.13 | Australia: amendment to the draft United Nations Convention against Transnational Organized Crime |
| A/AC.254/L.14 | Russian Federation: amendment to the draft United Nations Convention against Transnational Organized Crime |
| A/AC.254/L.15 | Colombia: amendment to the draft United Nations Convention against Transnational Organized Crime |
| A/AC.254/L.16 | Uruguay: amendments to the draft United Nations Convention against Transnational Organized Crime |
| A/AC.254/L.17 | Argentina: amendments to the revised draft Protocol to Prevent, Suppress and Punish Trafficking in Women and Children, supplementary to the United Nations Convention against Transnational Organized Crime |
| A/AC.254/L.18 | Draft report |
| A/AC.254/L.18/Add.1 | Draft provisional agenda and proposed organization of work for the third session of the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime, to be held in Vienna from 28 April to 3 May 1999 |
| A/AC.254/L.18/Add.2 | Revised draft United Nations Convention against Transnational Organized Crime |
| A/AC.254/L.19 | United Arab Emirates: amendments to the draft United Nations Convention against Transnational Organized Crime |

| *Symbol* | *Title or description* |
|---|---|
| A/AC.254/CRP.8 | Statement made on 13 January 1999 by the delegation of Cuba at the first session of the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime |
| A/AC.254/CRP.9 | Comments by Singapore on article 2 |
| A/AC.254/CRP.10 | Text of the Joint Action of 24 February 1997 submitted by the Council of the European Union |

United Nations

A/AC.254/12

General Assembly

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**Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime**
Third session
Vienna, 28 April-3 May 1999

# Annotated provisional agenda and proposed organization of work

## Provisional agenda

1. Opening of the third session of the Ad Hoc Committee.
2. Adoption of the agenda and organization of work.
3. Consideration of the draft United Nations Convention against Transnational Organized Crime, with particular emphasis on articles 4, 4 *bis*, 7 and 8.
4. Consideration of the additional international legal instrument against illicit manufacturing of and trafficking in firearms, their parts and components and ammunition.
5. Adoption of the report of the Ad Hoc Committee on its third session.

## Annotations

### 1. Opening of the third session of the Ad Hoc Committee

The third session of the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime will be convened on Wednesday, 28 April 1999, at 10 a.m. Pursuant to General Assembly resolution 53/111 of 9 December 1998, the third session of the Ad Hoc Committee will be held during the eighth session of the Commission on Crime Prevention and Criminal Justice, which is to be held in Vienna from 27 April to 6 May 1999. The Ad Hoc Committee will hold its meetings over four working days, utilizing resources available to the Commission at its eighth session and benefiting from the conference and interpretation services to be provided during that session of the Commission.

V.99-82578 (E)

## 2. Adoption of the agenda and organization of work

The Ad Hoc Committee, at its first session, held in Vienna, from 19 to 29 January 1999, decided that at its third session it would focus on articles 4, 4 *bis*, 7 and 8, dealing with money-laundering, confiscation and transparency of financial transactions (A/AC.254/9, para. 16).

At its second session, held in Vienna from 8 to 12 March 1999, the Ad Hoc Committee decided that at its third session it would devote one day to the consideration of the international legal instrument addressing illicit manufacturing of and trafficking in firearms, their parts and components and ammunition. Also at its second session, the Ad Hoc Committee endorsed the provisional agenda and proposed organization of work for its third session (A/AC.254/11, para. 24).

The resources available to the Ad Hoc Committee at its third session will permit the holding of two plenary meetings per day with simultaneous interpretation in the six official languages of the United Nations.

## 3. Consideration of the draft United Nations Convention against Transnational Organized Crime, with particular emphasis on articles 4, 4 *bis*, 7 and 8

At its first session, the Ad Hoc Committee concluded a first reading of articles 1-23 of the draft United Nations Convention against Transnational Organized Crime (as contained in document A/AC.254/4). At its second session, the Ad Hoc Committee considered articles 1-3 of the draft Convention, dealing with the objectives, scope of application of the Convention and definitions. The Ad Hoc Committee also completed a first reading of articles 24-30 of the draft Convention. The Ad Hoc Committee decided, at its first session, to consider at its third session articles 4, 4 *bis*, 7 and 8 of the draft Convention. That decision was made on the understanding that, should the Ad Hoc Committee complete the drafting of those articles with time remaining at its third session, it would proceed to the negotiation of as many other articles of the draft Convention as possible. In view of that decision and in the event of early conclusion of the negotiation of articles 4, 4 *bis*, 7 and 8 of the draft Convention, the Ad Hoc Committee may wish to proceed with the negotiation of articles 5, 9 and subsequent articles.

### Documentation

Revised Draft United Nations Convention against Transnational Organized Crime (A/AC.254/4/Rev.2)

Proposals and contributions received from Governments (A/AC.254/5/Add.5).

## 4. Consideration of the additional international legal instrument against illicit manufacturing of and trafficking in firearms, their parts and components and ammunition

The General Assembly, in its resolution 53/111, decided to establish an ad hoc committee for the purpose of, *inter alia*, discussing the elaboration, as appropriate, of international instruments addressing trafficking in women and children, combating the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition, and illegal trafficking in and transporting of migrants, including by sea. In the same resolution, the Assembly requested the Ad Hoc Committee, in carrying out this work, to

take into account, *inter alia*, Economic and Social Council resolutions 1998/18, 1998/19 and 1998/20 of 28 July 1998.

The General Assembly, in its resolution 53/114 of 9 December 1998, called upon the Ad Hoc Committee to devote attention to the drafting of the main text of the convention against transnational organized crime, as well as, as appropriate, of international instruments addressing trafficking in women and children, combating the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition, and illegal trafficking in and transporting of migrants, including by sea.

At its first session, the Ad Hoc Committee carried out a first reading of the draft international legal instrument against illicit manufacturing of and trafficking in firearms, their parts and components and ammunition. The proposals and comments of delegations have been incorporated in a revised version of that instrument, which will form the basis for the consideration of the matter by the Ad Hoc Committee at its third session.

**Documentation**

Revised draft Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition and Related Materials, Supplementary to the United Nations Convention against Transnational Organized Crime (A/AC.254/4/Add.2/Rev.1)

**Background documents**

Inter-American Convention against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives and other Related Materials (A/AC.254/CRP.1)

**5. Adoption of the report of the Ad Hoc Committee on its third session**

The Ad Hoc Committee is to adopt a report on its third session, the draft of which will be prepared by the Rapporteur.

# Annex

## Proposed organization of work of the third session of the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime, to be held in Vienna from 28 April to 3 May 1999

| *Date* | *Time* | *Item* | *Plenary* |
|---|---|---|---|
| Wednesday, 28 April | 10 a.m. to 1 p.m. | 1 | Opening of the third session of the Ad Hoc Committee |
| | | 2 | Adoption of the agenda and organization of work |
| | | 3 | Consideration of the draft United Nations Convention against Transnational Organized Crime, with particular emphasis on articles 4, 4 *bis*, 7 and 8 |
| | 3 to 6 p.m. | 3 | Continuation of the discussion |
| Thursday, 29 April to Friday, 30 April | 10 a.m. to 1 p.m. and 3 to 6 p.m. | 3 | Continuation and conclusion of the discussion |
| Monday, 3 May | 10 a.m. to 1 p.m. | 4 | Consideration of the additional international legal instrument against illicit manufacturing of and trafficking in firearms, their parts and components and ammunition |
| | 3 to 6 p.m. | 4 | Continuation and conclusion of the discussion |
| | | 5 | Consideration and adoption of the report of the Ad Hoc Committee on its third session |

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Economic and Social Council

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**Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime**
Third session
Vienna, 28 April-3 May 1999

**Commission on Crime Prevention and Criminal Justice**
Eighth session
Vienna, 27 April-6 May 1999
Item 6 (b) of the provisional agenda*
**International cooperation in combating transnational crime: elaboration of an international convention against transnational organized crime and other possible international instruments**

# Report of the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime

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* E/CN.15/1999/1.

V.99-82897 (E)

# I. Introduction

1. On the recommendation of the Commission on Crime Prevention and Criminal Justice and the Economic and Social Council (Council resolution 1998/14 of 28 July 1998), the General Assembly adopted resolution 53/111 of 9 December 1998, in which it decided to establish an open-ended intergovernmental ad hoc committee for the purpose of elaborating a comprehensive international convention against transnational organized crime and of discussing the elaboration, as appropriate, of international instruments addressing trafficking in women and children, combating the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition, and illegal trafficking in and transporting of migrants, including by sea. The Assembly also adopted resolution 53/114 of 9 December 1998, in which it called upon the Ad Hoc Committee to devote attention to the drafting of the main text of the convention, as well as the above-mentioned international instruments.

2. The Ad Hoc Committee held its first session from 19 to 29 January 1999 and its second session from 8 to 12 March 1999. It is scheduled to hold its third session from 28 April to 3 May 1999, in parallel with the eighth session of the Commission on Crime Prevention and Criminal Justice.

3. The present report is submitted to the Commission pursuant to General Assembly resolution 53/111, to apprise the Commission of progress achieved in the implementation of the mandate of the Ad Hoc Committee.

# II. Background

4. In resolution 49/159 of 23 December 1994, the General Assembly approved the Naples Political Declaration and Global Action Plan against Organized Transnational Crime (A/49/748, annex, sect. I) and urged States to implement them as a matter of urgency. In the Naples Political Declaration and Global Action Plan against Organized Transnational Crime, the World Ministerial Conference on Organized Transnational Crime requested the Commission on Crime Prevention and Criminal Justice to initiate the process of requesting the views of Governments on the impact of a convention or conventions against organized transnational crime and on the issues that could be covered therein.

5. The Regional Ministerial Workshop on Follow-up to the Naples Political Declaration and Global Action Plan against Organized Transnational Crime, held in Buenos Aires from 27 to 30 November 1995, adopted the Buenos Aires Declaration on Prevention and Control of Organized Transnational Crime (E/CN.15/1996/2/Add.1). The States of the Latin American and Caribbean region expressed the interest of their Governments in the further study of the advantages of an international convention against organized transnational crime during the fifth session of the Commission, and proposed elements for inclusion in the convention.

6. In resolution 51/120 of 12 December 1996, the General Assembly took note of the proposed draft United Nations framework convention against organized crime, introduced by Poland at the fifty-first session of the General Assembly (A/C.3/51/7, annex). The Assembly requested the Commission to consider, as a matter of priority, the question of the elaboration of an international convention against organized transnational crime, taking into account the views of all States on this matter, with a view to finalizing its work on this question as soon as possible.

7. The African Regional Ministerial Workshop on Organized Transnational Crime and Corruption, held in Dakar from 21 to 23 July 1997, adopted the Dakar Declaration on the Prevention and Control of Organized Transnational Crime and Corruption (E/CN.15/1998/6/Add.1). The States of the African region expressed their strong support for the elaboration of an international convention against organized transnational crime, and made specific suggestions to that end. They called upon all States to contribute to and be actively engaged in the elaboration of such an instrument, making every possible effort to resolve differences and overcome conceptual or substantive difficulties, in order to permit the process to be completed in the shortest time possible.

8. In its resolution 52/85 of 12 December 1997, the General Assembly took note of the report of the informal meeting on the question of the elaboration of an international convention against organized transnational crime, held in Palermo, Italy, from 6 to 8 April 1997 (E/CN.15/1997/7/Add.2), organized and hosted by the Fondazione Giovanni e Francesca Falcone. The Assembly decided to establish an inter-sessional open-ended intergovernmental group of experts for the purpose of elaborating a preliminary draft of a possible comprehensive

international convention against organized transnational crime, which would submit a report thereon to the Commission at its seventh session.

9. The intergovernmental group of experts held its meeting in Warsaw, from 2 to 6 February 1998, and submitted a report to the Commission at its seventh session, containing an outline of options for the contents of the international convention against organized transnational crime (E/CN.15/1998/5).

10. The Asian Regional Ministerial Workshop on Organized Transnational Crime and Corruption, held in Manila from 23 to 25 March 1998, adopted the Manila Declaration on the Prevention and Control of Transnational Crime (E/CN.15/1998/6/Add.2). The States of the region of Asia and Pacific welcomed the results achieved by the inter-sessional open-ended intergovernmental group of experts. They believed that the outline of options for the contents of the convention served as a solid basis for its further elaboration. They strongly supported such an endeavour, and confirmed their commitment to play an active role in the efforts to resolve differences and overcome conceptual or substantive difficulties so that the process could speedily move towards its conclusion. They urged the Commission to take advantage of the existing momentum and the consensus achieved on the desirability of such a convention, with a view to speeding up the process of its drafting and finalizing such a project as soon as possible.

11. At its seventh session, the Commission established an in-sessional working group on the implementation of the Naples Political Declaration and Global Action Plan against Organized Transnational Crime, which discussed the draft convention against organized transnational crime. The working group agreed that the elaboration of the convention must proceed at a vigorous pace, with a view to completing the negotiation process, if possible, by the year 2000. The working group carried out a thorough discussion of the options compiled in the report of the meeting of the inter-sessional intergovernmental group of experts. In particular, it discussed the chapters on the scope of application of the convention; participation in an organized crime group; money-laundering; corporate criminal liability; sanctions; confiscation; transparency of transactions; jurisdiction; extradition; the obligation to extradite or prosecute (*aut dedere aut judicare*); extradition of nationals; and consideration of requests for extradition.

12. The informal group of the "Friends of the Chair", which was established pursuant to the recommendation of the Commission at its seventh session to assist the Chairman of the Ad Hoc Committee, held its first meeting in Rome from 17 to 18 July 1998. At that meeting, the informal group reviewed and endorsed the provisional agenda of the informal preparatory meeting of the Ad Hoc Committee, which the Government of Argentina had generously offered to host in Buenos Aires in order to enable the continuation without interruption of the work on the elaboration of the convention. The informal group also reviewed a provisional timetable for its work and the work of the Ad Hoc Committee, submitted by the Secretariat.

13. The informal preparatory meeting of the Ad Hoc Committee was held in Buenos Aires from 31 August to 4 September 1998. By completing the first reading of the outline of options for the contents of the convention and discussing several outstanding issues regarding articles 1 through 13, the meeting produced a new consolidated draft text of the convention, which would provide the basis for the work of the Ad Hoc Committee at its first meeting. The informal preparatory meeting was assisted by contributions submitted by Governments prior to and during the meeting.

14. The second meeting of the informal group of the "Friends of the Chair" was held in Buenos Aires during the above-mentioned informal preparatory meeting of the Ad Hoc Committee. The informal group approved the timetable of its meetings and those of the Ad Hoc Committee until the envisaged completion of the mandated functions of the Ad Hoc Committee in the year 2000.

15. The third meeting of the "Friends of the Chair" was held in Vienna from 5 to 6 November 1998. It reviewed and endorsed the provisional agenda and organization of work of the first session of the Ad Hoc Committee.

# III. Progress in the implementation of the mandate of the Ad Hoc Committee

## A. Organizational and procedural matters

16. In its resolution 53/111, the General Assembly decided to accept the recommendation of the Commission to elect Luigi Lauriola (Italy) as the Chairman of the

Ad Hoc Committee. Mr. Lauriola indicated that he would act in his personal capacity and not as the representative of his country or of any regional group. Following informal consultations, the Ad Hoc Committee elected the following additional officers:

*Vice-Chairmen*: Kiyotaka Akasaka (Japan)
Nabil Ammar (Tunisia)
Demetrio Boersner (Venezuela)*
Zuzana Chuda (Slovakia)
Eric Danon (France**)
Roberta Lajous (Mexico)***
Patricio Palacios (Ecuador)
Janusz Rydzkowski (Poland)
Shaukat Umer (Pakistan)

*Rapporteur*: Peter Gastrow (South Africa).

17. The Ad Hoc Committee was of the view that the election of an expanded bureau would reduce the need for sessions of the informal working group established to assist the Chairman of the Ad Hoc Committee (the informal group of the "Friends of the Chair"), which had functioned during the preparatory phase. It recommended that, subject to the availability of the necessary resources, the sessions of the informal group of the "Friends of the Chair" that had been foreseen should be converted into sessions of the Ad Hoc Committee, with interpretation in the six official languages of the United Nations.

18. As mentioned above, the Ad Hoc Committee has undertaken to complete the task entrusted to it by the year 2000. In view of the rather short time available, and considering the volume and complexity of the work that the Committee has to carry out, the Secretariat proposed a provisional timetable of sessions for 1999 and 2000. In so doing, the Secretariat attempted to reconcile the requirements of the Ad Hoc Committee with the need to provide necessary services to it within existing resources for the current biennium. With the appropriate planning, and with the support of the bureau of the Ad Hoc Committee, the Secretariat was able to absorb the bulk of the cost of providing the Ad Hoc Committee with the requisite conference and interpretation services. Additional requirements were met through the generous voluntary contributions made by the Governments of Japan and the United States of America to the Crime Prevention and Criminal Justice Fund, in support of the elaboration of the convention. The Ad Hoc Committee is thus scheduled to hold three more sessions in 1999 as follows:

Fourth session: 28 June to 9 July 1999
Fifth session: 4 to 15 October 1999
Sixth session: 6 to 17 December 1999

Three more sessions are tentatively planned for 2000, subject to consideration and approval by the Committee of Conferences of the General Assembly. In addition, and drawing on past experience acquired through the elaboration of other international legal instruments, a Conference of Plenipotentiaries is planned for the third or fourth quarter of 2000 to finalize the texts of the convention and the additional international legal instruments.

19. The first session of the Ad Hoc Committee was attended by representatives of 91 States. Its second session was attended by representatives of 95 States. Also attending the first and second sessions were observers for entities maintaining permanent observer missions to the United Nations, organizations of the United Nations system, institutes of the United Nations Crime Prevention and Criminal Justice Programme network, intergovernmental organizations and non-governmental organizations.

20. In its resolution 53/111, the General Assembly invited donor countries to cooperate with developing countries to ensure their full participation in the work of the Ad Hoc Committee. That issue was also raised by several delegations and by the Group of 77 and China at the first and second sessions of the Ad Hoc Committee. On two separate occasions, the Secretariat drew the attention of developed countries to the call made by the General Assembly. The Governments of Japan and the United States made voluntary contributions to the Crime Prevention and Criminal Justice Fund, indicating that a part thereof was to be used to facilitate the participation of least developed countries in the work of the Ad Hoc Committee. However, the funds made available to date are not sufficient to defray the costs of participation of all 48 least developed countries in the work of the Ad Hoc Committee, as reflected in the above-mentioned provisional timetable. Therefore, the Secretariat will request the regional groups concerned to determine the least developed countries that will receive some assistance in relation to their participation.

* For the work of the Ad Hoc Committee in 1999.

** Replaced by Bérengère Quincy.

*** For the work of the Ad Hoc Committee in 2000.

21. At the first session of the Ad Hoc Committee, several delegations expressed concern about the accuracy of the terms used in the translation of documents into some of the official languages, and recommended that the Secretariat undertake the compilation of a glossary of terms. At the second session, the Secretariat announced that the compilation of the glossary was under way, with the support of the Translation Service. The Secretariat intended to distribute a first draft of the glossary to the Ad Hoc Committee at its third session. States could then review it and provide input to the Secretariat with a view to finalizing the glossary by the fourth session. The glossary would ultimately be included in the official records of the elaboration of the convention.

## B. Substantive matters

### 1. Elaboration of the draft Convention against Transnational Organized Crime

22. At its first session, the Ad Hoc Committee based its work on a document containing the draft Convention against Transnational Organized Crime (A/AC.254/4) and on proposals and contributions submitted by Governments (A/AC.254/5 and Add.2). The Chairman noted that that text had been the result of discussions and consultations held as follows: at the meeting of the inter-sessional open-ended intergovernmental group of experts on the elaboration of a preliminary draft of a possible comprehensive international convention against organized transnational crime, held in Warsaw from 2 to 6 February 1998; during the seventh session of the Commission on Crime Prevention and Criminal Justice, held in Vienna from 21 to 30 April 1998; and at the informal preparatory meeting of the Ad Hoc Committee, held in Buenos Aires from 31 August to 4 September 1998. The draft contained a number of options. On the recommendation of the Chairman, the Ad Hoc Committee decided to focus at its first session on eliminating options, in order to produce a consolidated text that would be the basis for the drafting and negotiations that would be undertaken at its subsequent sessions. Proceeding thus, the Ad Hoc Committee completed the first reading of articles 1 to 23 of the draft Convention. The suggestions for consolidating the text and proposals for new or amended provisions, together with specific observations on either the existing text or the substance of new provisions made by delegations at the first session, were included in a new version of the draft Convention (A/AC.254/4/Rev.1).

23. At its second session, the Ad Hoc Committee had decided to focus on articles 1 to 3 of the draft Convention, dealing with the statement of objectives, the scope of application and definitions. Basing its work on the revised version of the draft Convention (A/AC.254/4/Rev.1) and on proposals and contributions submitted by Governments (A/AC.254/5/Add.3 and 4), the Ad Hoc Committee concluded its discussion on article 1. The agreed text was included in the new version of the draft Convention (A/AC.254/4/Rev.2). In discussing article 2, the Ad Hoc Committee agreed that elements from paragraph 2 of the previous version could be useful to it in its consideration of other provisions, such as those pertaining to mutual legal assistance. The Chairman proposed that the list of offences included in article 2, paragraph 3, be removed from the draft text of the convention. Moreover, the Chairman proposed, as a compromise solution, that a list of offences, which could be either indicative or exhaustive, such as the list originally contained in article 2, paragraph 3, could be included either in an annex to the convention or in the *travaux préparatoires*. Those proposals were accepted by the Ad Hoc Committee. The list from article 2, paragraph 3, is contained in an attachment to the revised version of the draft Convention. That attachment also contains a list circulated by some delegations at the second session of the Ad Hoc Committee and a list submitted by the Government of Egypt subsequent to that session. The Chairman called upon all interested States to consult with each other in order to reach agreement on the contents of the list. At the second session, several delegations expressed their preference for including the list in an annex to the convention. Other delegations expressed their preference for no list at all.

24. At its second session, the Ad Hoc Committee discussed articles 2 *bis* and 3. It also completed a first reading of articles 24 to 30 of the draft Convention. The comments and proposals made by delegations are reflected in the revised version of the draft Convention.

25. The Ad Hoc Committee requested the Secretariat to carry out an analytical study on provisions of national laws relevant to the convention concerning offences punishable by deprivation of liberty, with an indication of the number of years of imprisonment. The study should be based on information to be solicited from Member States. Member

States would also be asked to indicate whether their legislation qualified offences as serious and, if so, what criteria were used, and which crimes were considered serious. Member States should submit the information before 30 April 1999 with a view to the study being completed and made available to the Ad Hoc Committee at its fourth session. Pursuant to that request, the Secretariat addressed a note verbale to Governments on 31 March 1999, seeking the necessary information for the conduct of the analytical study.

26. The Ad Hoc Committee has decided to focus at its third session on articles 4, 4 *bis*, 7 and 8 of the draft Convention, dealing with money-laundering, confiscation and transparency of financial transactions.

### 2. Elaboration of the additional international legal instruments

27. At its first session, the Ad Hoc Committee discussed the relationship between the additional international legal instruments, whose elaboration it had been requested to undertake pursuant to General Assembly resolutions 53/111 and 53/114, and the convention. Pursuant to these resolutions, the convention was to be a self-sufficient and self-standing instrument. The highest priority would be given to the signature, ratification and entry into force of the convention, and every effort should be made to negotiate a text that would be conducive to meeting that priority. The additional international legal instruments were viewed in principle as optional protocols to the convention, covering areas that required specificity, which the convention could not meet. There was a need to ensure that the optional protocols would be consistent with the convention, not only to ensure compatibility, but also to maximize the relevance and applicability of general provisions, such as those pertaining to international cooperation, which would be covered under the convention. However, it was pointed out that each instrument was intended to meet specific concerns. Consequently, the instruments might require a broad scope. In that case, and in line with the relevant resolutions of the Economic and Social Council and the General Assembly, the possibility that the additional international legal instruments might be independent from the convention could not be excluded. There was a discussion on whether signature of or accession to the protocols would be possible without prior signature of or accession to the convention, the general preference being towards requiring prior signature of or accession to the convention. The Ad Hoc Committee deemed that it was more appropriate to discuss that issue, together with the question of reservations, when considering the relevant articles of the draft Convention.

28. At its first session, the Ad Hoc Committee carried out a first reading of the additional international legal instruments on combating the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition, on the basis of a draft submitted by the Government of Canada (A/AC.254/4/Add.2), and on illegal trafficking in and transporting of migrants, including by sea, on the basis of a draft submitted by the Governments of Austria and Italy (A/AC.254/4/Add.1). The proposals and comments made by delegations during this first reading were reflected in revised versions of the draft international legal instruments (A/AC.254/4/Add.2/Rev.1 and A/AC.254/4/Add.1/Rev.1). The delegations of Argentina and the United States introduced their respective versions of the draft additional international legal instrument against trafficking in women and children (A/AC.254/8 and A/AC.254/4/Add.3), and undertook to produce a combined draft for the second session of the Ad Hoc Committee.

29. At its second session, the Ad Hoc Committee decided to focus on a first consideration of the international legal instruments against trafficking in women and children. It based its discussion on a document containing the revised draft Protocol to Prevent, Suppress and Punish Trafficking in Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime (A/AC.254/4/Add.3/Rev.1). The Ad Hoc Committee carried out a first reading of articles 1 and 2 of the draft Protocol. The comments and proposals made during the second session are reflected in the revised text of the draft Protocol (to be issued as document A/AC.254/4/Add.3/Rev.2). During this first reading, there was discussion on whether the Protocol would address trafficking in women and children or trafficking in persons. The Secretariat was requested to clarify the question whether, by considering trafficking in persons, the Ad Hoc Committee would be departing from the mandate given to it by the General Assembly, and whether, if that were the case, it would be competent to do so. The Secretariat undertook to explore the matter and inform the Ad Hoc Committee of its findings.

30. The Ad Hoc Committee has decided to devote one day at its third session to the consideration of the

additional international legal instrument against the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition.

## IV. Action by the Commission

31. The Commission might wish to provide its views on the progress achieved by the Ad Hoc Committee thus far in the implementation of its mandate. The Commission might also wish to explore ways of supporting the work of the Ad Hoc Committee, in order to ensure that the latter performs its assigned tasks within the time-limits prescribed by Member States.

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**Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime**
Fourth session
Vienna, 28 June-9 July 1999

# Report of the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime on its third session, held in Vienna from 28 April to 3 May 1999

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# I. Introduction

1. The Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime was established by the General Assembly in its resolution 53/111 of 9 December 1998. In its resolution 53/114, also of 9 December 1998, the Assembly called upon the Ad Hoc Committee to devote attention to the drafting of the main text of the Convention, as well as of international instruments addressing trafficking in women and children, combating the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition, and illegal trafficking in and transporting of migrants, including by sea.

# II. Organization of the session

## A. Opening of the session

2. The Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime held its third session in Vienna from 28 April to 3 May 1999. The Ad Hoc Committee held eight meetings.

3. At its first session, held in Vienna from 19 to 29 January 1999, the Ad Hoc Committee had decided to consider articles 4, 4 *bis*, 7 and 8 of the draft Convention at its third session and also to continue its first reading of the additional international legal instrument against illicit manufacturing of and trafficking in firearms, their parts and components and ammunition.

4. After the opening of the third session of the Ad Hoc Committee by its Chairman, the Secretary called the attention of the Ad Hoc Committee to three outstanding matters. Firstly, in connection with the additional instrument on trafficking in women and children, the Secretary recalled that at its second session the Ad Hoc Committee had made a request that the Secretariat clarify whether, by considering trafficking in persons, the Ad Hoc Committee would be departing from the mandate given to it by the General Assembly and, if that were the case, whether it would be competent to do so. The Secretariat had consulted the Senior Legal Liaison Officer of the United Nations Office at Vienna and brought to the attention of the Ad Hoc Committee his response. According to the Senior Legal Liaison Officer, in its resolutions 53/111 and 53/114, the General Assembly had clearly defined the subjects for which new instruments were required. If the Assembly had wanted any other subjects to be included, it would have said so. Moreover, the recommendations of the Economic and Social Council (e.g. Council resolutions 1998/14 and 1998/20), which formed the basis for the Assembly resolutions, referred to trafficking in women and children and not to trafficking in persons. Those resolutions had been adopted unanimously and the terms used therein reflected the desires of the Assembly. If, however, the Ad Hoc Committee, after considering the issues before it, had come to the conclusion that, instead of developing an instrument addressing trafficking in women and children, it would be in the general interest to develop an instrument dealing with trafficking in persons, it might wish to request the Assembly to modify its mandate in that connection. States might take advantage for that purpose of the eighth session of the Commission, which was running in parallel to the third session of the Ad Hoc Committee.

5. Secondly, the Secretary also recalled that at its second session, held in Vienna from 8 to 12 March 1999, the Ad Hoc Committee had requested the Secretariat to carry out an analytical study on provisions of national laws concerning offences punishable by deprivation of liberty, with an indication of the number of years of imprisonment involved. The Secretary informed the Ad Hoc Committee that, although the deadline of 30 April 1999 set by the Ad Hoc Committee was about to expire, the number of responses received was so low that it did not permit the conduct of the analytical study. The Ad Hoc Committee was therefore invited either to extend the deadline for the submission of information by States or to reverse its previous decision regarding the analytical study. The Secretary also indicated that an extension of the deadline would mean that the analytical study might be available for distribution to the Ad Hoc Committee only at its fifth session.

6. Thirdly, the Secretary informed the Ad Hoc Committee that the work on the glossary of terms was continuing, but that the current workload had made it impossible for a first draft to be available to the Ad Hoc Committee at its third session.

7. The representative of the United States of America announced that his Government intended to make a voluntary contribution of $925,000 to the United Nations Crime Prevention and Criminal Justice Fund. Part of that contribution would be used to facilitate the development of the Convention and its protocols. The representative of Japan announced that his Government had made a voluntary contribution of $300,000 to the Fund and stated

that the Secretariat would be consulted regarding the appropriate use of the contribution. The Chairman, on behalf of the Ad Hoc Committee, expressed his gratitude to the Governments of Japan and the United States of America for their generosity.

8. The representatives of Saudi Arabia and the Sudan drew attention to the unavailability of the text of the revised draft Convention (A/AC.254/4/Rev.2) in Arabic. The document was made available and the Chairman, while noting that the ability of delegations working in Arabic had not been hampered by the delay because the text of articles 4, 4 *bis*, 7 and 8 was the same as in document A/AC.254/4/Rev.1, drew the attention of the Secretariat to the need to have all documentation available in good time in all the working languages of the United Nations.

### B. Attendance

9. The third session of the Ad Hoc Committee was attended by representatives of 111 States. Also attending the third session were observers for entities maintaining permanent observer missions to the United Nations, organizations of the United Nations system, institutes of the United Nations Crime Prevention and Criminal Justice Programme network, intergovernmental organizations and non-governmental organizations. A list of participants is contained in annex I to the present report.

10. The representative of Tunisia informed the Secretariat that Amina Lazoughli would replace Nabil Ammar as Vice-Chairman of the Ad Hoc Committee.

### C. Adoption of the agenda and organization of work

11. At its 29th meeting, on 28 April 1999, the Ad Hoc Committee adopted the following agenda for its third session:

1. Opening of the third session of the Ad Hoc Committee.
2. Adoption of the agenda and organization of work.
3. Consideration of the draft United Nations Convention against Transnational Organized Crime, with particular emphasis on articles 4, 4 *bis*, 7 and 8.
4. Consideration of the additional international legal instrument against illicit manufacturing of and trafficking in firearms, their parts and components and ammunition.
5. Adoption of the report of the Ad Hoc Committee on its third session.

### D. Documentation

12. At its third session, the Ad Hoc Committee had before it, in addition to the documents prepared by the Secretariat, documents containing proposals and contributions submitted by the Governments of Azerbaijan, Belgium, Finland, France, Japan, Kuwait, Mexico, South Africa, Spain, Sweden, the United Kingdom of Great Britain and Northern Ireland and the United States of America. A list of documents is contained in annex II.

## III. Discussion on the draft Convention

13. The Ad Hoc Committee based its work on a document containing the revised draft United Nations Convention against Transnational Organized Crime (A/AC.254/4/Rev.2) and on proposals and contributions submitted by Governments (A/AC.254/5/Add.5 and Add.6).

14. The Ad Hoc Committee discussed articles 4, 4 *bis*, 7 and 8. In accordance with the request of its Chairman, the Ad Hoc Committee sought to reach agreement on a single text that would reflect, to the extent possible, the emerging consensus and would form the basis for further drafting. The new version of the text of those articles was included in document A/AC.254/L.27/Add.2. The Ad Hoc Committee decided to delete article 8 from the draft text of the Convention, as its contents had been superseded by either option of article 4 *bis*. The progress achieved by the Ad Hoc Committee at its third session would be reflected in a new version of the draft Convention.[1]

[1] To be issued subsequently as document A/AC.254/4/Rev.3.

## IV. Discussion on the additional international legal instrument against illicit manufacturing of and trafficking in firearms, their parts and components and ammunition

15. The Ad Hoc Committee based its work on a document containing the revised draft international legal instrument against illicit manufacturing of and trafficking in firearms, their parts and components and ammunition (A/AC.254/4/Add.2/Rev.1) and on proposals and contributions submitted by Governments (A/AC.254/5/Add.5).

16. The Ad Hoc Committee had carried out a first reading of articles 1-8 of the draft text at its first session. Pursuant to the suggestion of its Chairman, the Ad Hoc Committee completed the first reading of the draft text, beginning with article 9. The Ad Hoc Committee refrained from considering the final clauses of the draft instrument (i.e. articles 18 *ter*-19 *bis*), in the interest of consistency and of making full use of the time available to it, as those articles were considered standard in international instruments and depended on the outcome of the negotiations on similar provisions of the Convention.

17. The need for input from experts on the many technical matters covered by the instrument emerged from the discussion and was highlighted by many delegations and the Chairman. In that connection, the Ad Hoc Committee explored the most appropriate ways of benefiting from such input while ensuring the integrity of the negotiation process. The Committee was of the view that, bearing in mind the difficulties faced by many developing countries in sending experts from their capitals, States should be encouraged to include experts on the various issues covered by the instrument in their delegations. Those experts could hold informal meetings during future sessions of the Ad Hoc Committee in order to provide technical advice to the Ad Hoc Committee to assist it in advancing the negotiations.

## V. Adoption of the report of the Ad Hoc Committee on its third session

18. At its 36th meeting, on 3 May 1999, the Ad Hoc Committee adopted the report on its third session (A/AC.254/L.27).

19. At the same meeting, the Ad Hoc Committee approved the provisional agenda and organization of work for its fourth session, to be held in Vienna from 28 June to 9 July 1999 (A/AC.254/L.27/Add.1).[1]

[1] To be issued subsequently as document A/AC.254/15.

# Annex I

## List of participants

**States**

| | |
|---|---|
| **Algeria** | Mokhtar Reguieg, Faouzia Benmansour, Mohamed Malek, Salah Francis El-Hamdi |
| **Angola** | Vasco Antonio Grandão Ramos, Agostinho Domingos, Astrigildo João Pedro Culolo, José Leitão Neves Bravo Da Costa |
| **Argentina** | Raúl Granillo Ocampo, Juan Carlos Kreckler, Julio Aparicio, José Genaro Baez, Eugenio M. Curia, Ana Luisa Wirth-Schwind, Mónica Perlo-Reviriego, Daniel E. Amigo, Francisco D'Albora, Silvia Marino, Jorge Saenz, Mariana Siga, Roberto Martínez Medina, Juan Bellando |
| **Armenia** | Ashot Kocharian |
| **Australia** | Geoffrey Dabb, Steven Marshall, Helen Stylianou |
| **Austria** | Irene Freudenschuss-Reichl, Marianne da Costa de Maraes, Susanne Keppler-Schlesinger, Enno Drofenik, Christian Ebner, Elisabeth Marschang, Craig Davidson, Ingrid Kircher, Gregor Schusterschitz, Johann Haller, Wolfgang Pekel, Stefan Benner, Gabriel Loidl, Walter Grosinger, Elisabeth Bertagnoli |
| **Azerbaijan** | Vaqif Sadiqov, Fuad Ismayilov, Zavek Kafaeov, Namig Hasanov, Baylar Abbasov |
| **Barbados** | Janice Jennifer Farley, Darwin C. Dottin |
| **Belgium** | Michel Adam, Peter Martin, Jean-Sebastian Jamart, W. De Meyer, Boucique Wouter |
| **Benin** | Antoine Gouhouede |
| **Bolivia** | Juan Antonio Chain Lupo, Jaime Niño de Guzmán Quiroz, María Espinoza |
| **Botswana** | Norman Seduma Moleboge, Victor Ghanie |
| **Brazil** | Affonso Celso de Ouro-Preto, Sandra Valle, Oswaldo E. B. Portella, Manuel Antonio Gomes Pereira, José Jorge Alcazar Almeida |

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| **Bulgaria** | Ivan Naydenov, Traiko Spasov |
| **Burkina Faso** | Ousmane Traobe |
| **Burundi** | Emmanuel Karirimbanya |
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| **Chile** | Gustavo Villalobos Sepulveda, Carlos Maldonado Curti, Rosa Melendez Jimenez, Hector Muñoz Montecinos, Gloria Navarrete |
| **China** | Zhang Yishan, Wang Lixian, Guo Jian'an, Liu Yinghai, Diao Mingsheng, Zhai Jinrong, Sun Maoli, Sun Ang, Liu Huiling, Zhang Yi, Li Xiaohong, Zhu Yong, Shen Jian |
| **Colombia** | Farid Samir Benavides, Enrique Celis Duran, Maria Claudia Pavajeau, Carlos Rodriguez Bocanegra, Maria Paulina Riveros Duenas |
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| **Germany** | Karl Borchard, Michael Grotz, Hans Peter Plischka, Uwe Wewel, Peter Holz, Michael Rahmann, Marco Düerkop, Ernst-Heinrich Ahlf, Achim-Volker Koenig, Albrecht Volkwein |
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| **Guatemala** | Ricardo Diaz Duque, Sylvia Wohlers de Meie |
| **Haiti** | Rolande Doraway Dathis |
| **Holy See** | Mario Zenari, Helmut Fuchs, Monika Mader, Katherine Gangl |
| **Hungary** | Tibor Tóth, Laszlo Gal, György Eiselt, Andrea Igazi, Sándor Virág, Zoltán Márki, Attila Zsigmond, Laszlo Ladvenicza |
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| **Iraq** | Janan Faris |
| **Ireland** | Tony McDermottroe, Nicholas Twist, Anne Vaughan |
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| **Kenya** | Stephen M. Mbiyu, Okoth Isaac Elivo Woweyi |
| **Kuwait** | Faisal Al-Ghais, Hamed Saleh Al-Othman, Zakaria Al-Ansari, Abdulwahed Zaid, Abdulhameed Al-Awadhi, Jasem Al-Budaiwi |
| **Latvia** | Aleksandra Rozova |
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| **Malaysia** | Melanie Leong, Ahmad Anwar Adnan, Mohd Nawawi Ismail, Yaacob Amin |
| **Mali** | Christian Idrissa Diassana |
| **Malta** | Carmel A. Agius |
| **Mauritania** | Mohamed Abd Balana |
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| **Morocco** | Abderrahim Benmoussa, Abdellatif Saadi |
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| **Nigeria** | Abdullahi Jika, Sunday G. Ehindero, A. Mbamali, Umar E. Mohammed, A. A. Ayoko, Lot Peter Egopija |
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| **Portugal** | Álvaro Mendonça E. Moura, Mario Gomes Dias, Euclides Dâmaso Simões, Maria do Carmo Dacosta, Teresa Alves Martins, Cristina Pucarinho |
| **Qatar** | Ali Sultan Al Kuwari, Ali Issa Al-Khulaifi, Salim Sager Al-Meraikhi |
| **Republic of Korea** | Seung Nam Shin, Jung Sug Chae, Chang Jae Lee, Joon Oh Jang, Chong Hoon Kim, Chong Lee Hahn |
| **Romania** | Cristina Luzescu, Flavius Craznic, Adrian Vierita |

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| **Russian Federation** | Sergei N. Karev, Valery V. Loshchinin, Victor N. Melnikov, Georgiy G. Matchitidze, Chief of Division, Security Council, Mikhail S. Paleyev, Lyudmila N. Kurovskaya, Vladimir V. Chistyukhin, Natalya Y. Goltsova, Igor L. Smirnov, Victor S. Dolmatov, Valentine I. Mikhailov, Anatoly V. Grinenko, Ivan G. Lukyanov, Alexander V. Zinevitch, Andrei Y. Averin, Maxim V. Kotelnikov |
| **Saudi Arabia** | A. M. Al-Ghamdi, A. A. Al-Yousef, A. H. Al-Shamrani, F. N. Al-Menna, M. N. Al-Aula, M. M. Al-Saiari, M. Al-Objan, S. G. Alrachach |
| **Singapore** | Bala Reddy, Mathew Joseph, Danielle Ping Lin Yeow, Su Hoong Chang, Hamidul Haq |
| **Slovakia** | Alojz Némethy, Zuzana Chudá, Metod Špaček, Pavol Slopovský, Vladimír Ďurana, Denisa Ivanová, Jozef Szabó, Zuth Erdelyiova, Eva Scirankova |
| **Slovenia** | Miha Wohinz, Maja Prodan, Klavdijo Stroligo, Ljubomir Jovanovic, Bruno Blazina |
| **South Africa** | N. J. Mxakato-Diseko, P. C. Jacobs, N. P. Notutela, Peter Gastrow, Peter Smith, Lorraine Eve Glanz, Johanna Prozesky |
| **Spain** | Antonio Ortiz, Alvaro Trejo, Ignacio Baylina, Severino González Prieto, Juan González Bueno |
| **Sri Lanka** | Yasantha Kodagoda |
| **Sudan** | Wanan Abdelnasir, Abubakr Salih Nur, Charles Manyang Dawol, Abu Baker Elgadir, Kureng Akuei Pac |
| **Sweden** | Örjan Landelius, Per Hedvall, Hakan Öberg, Barbro Jönsson, Hjalmar Forsberg, Christer Ahlström, Bergens Irand |
| **Switzerland** | Marianne von Grünigen, Urs Breiter, Anita Marfurt, Lorenza Rossini, Olivier Zehnder, Stefano Toscano |
| **Syrian Arab Republic** | Mohamad Hariri, Mahmoud Alkam, Aziz Shukri, Akram Kawoux, J. Nabouti |
| **Thailand** | Sorayouth Prompoj, Sirisak Tiyapan, Jirapat Labanukrom, Morakot Sriswasdi, Rutt Chumdermpadetsuk |
| **The former Yugoslav Republic of Macedonia** | Ognen Maleski, Margarita Trajkova, Ruzica Zanteva Angelova |

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| **Togo** | Joachim Beni-Locco |
| **Tunisia** | Chaabane Abdelaziz, Amina Lazoughli, Mohamed Gafsi, M. Lejmi, Abderrazak Mansour, Nabil Ammar |
| **Turkey** | Yasar Yakis, A. Asim Arar, M. Aydin Özbay, Ates Hasan Sözen, Ceyhun Harput, Macide Erdener, Ayse Simsek, Oktay Üstün, Belgin Aksu Canga, Nilüfer Erdem Kaygisiz, Kuntay Celik, Serife Avci |
| **Uganda** | Richard Buteera |
| **Ukraine** | Mykola Makarevych, Yevgen Strekalov, Rostyslav Tronenko, Viktoria Kuvshynnykova |
| **United Arab Emirates** | Abdul Rahim Yousef Al Awadi, Ahmed Al Dosari, Mohammed Mahmoud Al Kamali, Mohammed Murad Abdulla, Ahmed Eid Al Mansoori, Tariq Mohd Noor Tahlak, Jamal Mohammed Al Banai, Khamis Saif Rashed, Abdulla Essa Alfalasi |
| **United Kingdom of Great Britain and Northern Ireland** | Godfrey Stadlen, John Freeman, Richard Bradley, Peter Storr, Peter Vallance, Ruth Goodwin, David Lusher, Douglas Dalziel, Graham Widdecombe, Andrew Lewis, Samantha Danielle Ryb |
| **United States of America** | Rob Boone, Kenneth Propp, Kenneth Harris, Jeffrey Bullwinkel, James Finckenauer, John Schwarz, Linda Samuel, Nan Donnells, Teresa Gayle Ficaretta, Kenneth Croke, Daniel Glaser, Bess Michael, Enrique Perez, Sarah Scott, Herbert S. Traub |
| **Uruguay** | Jorge Tálice, Fructuoso Pittaluga-Fonseca, Elena Fajardo |
| **Uzbekistan** | M. Irgashev, Olga Muminova |
| **Venezuela** | Demetrio Boersner, Kidder Salazar |
| **Viet Nam** | Nguyen Xuan Hong, Pham Hong Nga |
| **Yemen** | Hassan M. Makki, Nageeb Ismail Ali, Mohamed Jaffer Abdulle Kassim |
| **Zambia** | Joseph Chambula Kasongo, Alex Chilufya |
| **Zimbabwe** | Phelekezela Mphoko, Wallace P. Banda |

**Entities represented by observers**

Palestine

**United Nations**

Secretary of the Fifth Committee of the General Assembly, Department of Public Information, Office of the United Nations High Commissioner for Human Rights, Office for Drug Control and Crime Prevention, United Nations Centre for Human Settlements (Habitat), Office of the United Nations High Commissioner for Refugees, United Nations Interregional Crime and Justice Research Institute

**Affiliated regional institutes and associated institutes**

Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders, Latin American Institute for the Prevention of Crime and the Treatment of Offenders, African Institute for the Prevention of Crime and the Treatment of Offenders, International Centre for Criminal Law Reform and Criminal Justice Policy, International Institute of Higher Studies in Criminal Sciences, Naif Arab Academy for Security Studies, Raoul Wallenberg Institute of Human Rights and Humanitarian Law, International Scientific and Professional Advisory Council

**Specialized agencies and other organizations of the United Nations system**

United Nations Educational, Scientific and Cultural Organization, United Nations Industrial Development Organization

**Other intergovernmental organizations**

African Development Bank, Council of Arab Ministers of the Interior, Council of the European Union, Customs Cooperation Council, European Commission, Financial Action Task Force on Money Laundering, International Centre for Migration Policy Development, International Criminal Police Organization, International Federation of Red Cross and Red Crescent Societies, International Organization for Migration, League of Arab States, Organization of the Islamic Conference, Secretariat of the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies

**Non-governmental organizations**

*General consultative status*:

International Council of Women

*Special consultative status*:

Asia Crime Prevention Foundation, Association for the Study of the World Refugee Problem, Caritas Internationalis (International Confederation of Catholic Charities), Defence for Children International Movement, European Women's Lobby, Howard

League for Penal Reform, International Association of Judges, International Association of Lawyers, International Association of Penal Law, International Bar Association, International Centre of Sociological, Penal and Penitentiary Research and Studies, International Council of Environmental Law, International Council on Alcohol and Addictions, International Federation of University Women, International Federation of Women in Legal Careers, International Fellowship of Reconciliation, International Human Rights Law Group, International Institute of Humanitarian Law, International League for Human Rights, Italian Centre of Solidarity, Marangopoulos Foundation for Human Rights, National Council of German Women's Organizations—Federal Union of Women's Organizations and Women's Groups of German Associations, E.V., Pax Romana (International Catholic Movement for Intellectual and Cultural Affairs) (International Movement of Catholic Students), Penal Reform International, Prison Fellowship International, World Association of Girl Guides and Girl Scouts, World Society of Victimology

*Roster*:

International Abolitionist Federation, International Alliance of Women—Equal Rights, Equal Responsibilities, International Confederation of Free Trade Unions, International Peace Bureau, Japan Federation of Bar Associations, Movement Against Racism and for Friendship among Peoples, National Rifle Association of America/Institute for Legislative Action, Sporting Shooters Association of Australia, Verification Technology Information Centre (VERTIC)

# Annex II

## List of documents before the Ad Hoc Committee at its third session

| *Document symbol* | *Title or description* |
|---|---|
| A/AC.254/4/Rev.2 | Revised draft United Nations Convention against Transnational Organized Crime |
| A/AC.254/4/Add.2/Rev.1 | Revised draft Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition and Other Related Materials, Supplementary to the United Nations Convention against Transnational Organized Crime |
| A/AC.254/5/Add.5 and 6 | Proposals and contributions received from Governments |
| A/AC.254/11 | Report of the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime on its second session, held in Vienna from 8 to 12 March 1999 |
| A/AC.254/12 | Annotated provisional agenda and proposed organization of work |
| A/AC.254/13-E/CN.15/1999/5 | Report of the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime |
| A/AC.254/L.20 | Azerbaijan: amendments to the draft United Nations Convention against Transnational Organized Crime |
| A/AC.254/L.21 | France: amendments to the draft Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition and Other Related Materials, Supplementary to the United Nations Convention against Transnational Organized Crime |
| A/AC.254/L.22 | Japan: comments on the draft Firearms Protocol |
| A/AC.254/L.23 | Mexico: draft Protocol on Money-Laundering, Supplementary to the United Nations Convention against Transnational Organized Crime |
| A/AC.254/L.24 | United States of America: amendment to article 4 of the draft United Nations Convention against Transnational Organized Crime |
| A/AC.254/L.25 | Kuwait: comments regarding the revised draft United Nations Convention against Transnational Organized Crime |

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| A/AC.254/L.26 | Finland: revised draft of article 4 on the basis of the summary of the Chairman of the Ad Hoc Committee |
| A/AC.254/L.27 | Draft report of the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime on its third session, held in Vienna from 28 April to 3 May 1999 |
| A/AC.254/L.27/Add.1 | Draft provisional agenda and proposed organization of work for the fourth session of the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime, to be held in Vienna from 28 June to 9 July 1999 |
| A/AC.254/L.27/Add.2 | Revised draft United Nations Convention against Transnational Organized Crime |
| A/AC.254/CRP.11 | The Forty Recommendations of the Financial Action Task Force on Money Laundering |

United Nations

A/AC.254/15

General Assembly

Distr.: General
19 May 1999

Original: English

**Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime**
Fourth session
Vienna, 28 June-9 July 1999

# Provisional annotated agenda and proposed organization of work

## I. Provisional agenda

1. Opening of the fourth session of the Ad Hoc Committee.
2. Adoption of the agenda and organization of work.
3. Consideration of the draft United Nations Convention against Transnational Organized Crime, with particular emphasis on articles 4 *ter*, 5, 6, 9, 10 and 14.
4. Consideration of additional international legal instruments:
   (a) Draft international legal instrument against illegal trafficking in and transporting of migrants;
   (b) Draft international legal instrument against trafficking in women and children.
5. Adoption of the report of the Ad Hoc Committee on its fourth session.

## II. Annotations

### 1. Opening of the fourth session of the Ad Hoc Committee

The fourth session of the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime will be convened on Monday, 28 June 1999, at 10 a.m.

### 2. Adoption of the agenda and organization of work

At its third session, held in Vienna from 28 April to 3 May 1999, the Ad Hoc Committee decided that at its fourth session it would focus on articles 4 *ter*, 5, 6, 9, 10 and 14, dealing with measures against corruption, corporate liability, effective implementation of the Convention, jurisdiction, extradition and mutual legal assistance, and that it would devote one week to the consideration of the international legal instruments against illegal

trafficking in and transporting of migrants, including by sea, and trafficking in women and children. At its third session, the Ad Hoc Committee adopted the provisional agenda and proposed organization of work for its fourth session.

The resources available to the Ad Hoc Committee at its fourth session permit the holding of two plenary meetings per day with simultaneous interpretation in the six official languages of the United Nations.

### 3. Consideration of the draft United Nations Convention against Transnational Organized Crime

At its first session, held in Vienna from 19 to 29 January 1999, the Ad Hoc Committee concluded a first reading of articles 1-3, 5, 6 and 9-23 of the draft United Nations Convention against Transnational Organized Crime (A/AC.254/4). At its second session, held in Vienna from 8 to 12 March 1999, the Ad Hoc Committee carried out a second reading of articles 1-3 of the draft Convention, dealing with the statement of objectives, the scope of application, the use of terms, and participation in a criminal organization. The Ad Hoc Committee also completed a first reading of articles 24-30 of the draft Convention. At its third session, the Ad Hoc Committee carried out a first reading of articles 4, 4 *bis*, 7 and 8, on money-laundering and measures to combat it, confiscation and transparency of transactions. Also at its third session, the Ad Hoc Committee decided that at its fourth session it would proceed with a second reading of articles 4 *ter*, 5, 6, 9, 10 and 14. That decision was taken on the understanding that, should the Committee complete its consideration of those articles with time remaining in its fourth session, it would proceed to the negotiation of as many other articles of the draft Convention as possible. In view of that decision and in the event of early conclusion of the negotiation of articles 4 *ter*, 5, 6, 9, 10 and 14 of the draft Convention, the Ad Hoc Committee may wish to proceed with the negotiation of article 15 and subsequent articles.

**Documentation**

Revised draft United Nations Convention against Transnational Organized Crime (A/AC.254/4/Rev.3)

Proposals and contributions received from Governments (A/AC.254/5/Add.7)

### 4. Consideration of additional international legal instruments

### (a) Draft international legal instrument against illegal trafficking in and transporting of migrants

### (b) Draft international legal instrument agains trafficking in women and children

In its resolution 53/111 of 9 December 1998, the General Assembly decided to establish an open-ended intergovernmental ad hoc committee for the purpose, *inter alia*, of discussing the elaboration, as appropriate, of international instruments addressing trafficking in women and children, combating the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition, and illegal trafficking in and transporting of migrants, including by sea, and requested the Ad Hoc Committee, in carrying out that work, to take into account, *inter alia*, Economic and Social Council resolutions 1998/18, 1998/19 and 1998/20 of 28 July 1998.

In its resolution 53/114 of 9 December 1998, the General Assembly called upon the Ad Hoc Committee to devote attention to the drafting of the main text of the convention as well as, as appropriate, of international instruments addressing trafficking in women and children, combating the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition, and illegal trafficking in and transporting of migrants, including by sea.

At its first session, the Ad Hoc Committee carried out a first reading of the draft international legal instrument against illegal trafficking in and transporting of migrants. The proposals and comments of delegations were incorporated into a revised version of the draft instrument (A/AC.254/4/Add.1/Rev.1), which will form the basis for the consideration of the matter by the Ad Hoc Committee at its fourth session.

At its second session, the Ad Hoc Committee carried out a first reading of articles 1 and 2 of the draft international legal instrument against trafficking in women and children. The proposals and comments of delegations were incorporated into a revised version of the draft instrument (A/AC.254/4/Add.3/Rev.2), which will form the basis for the consideration of the matter by the Ad Hoc Committee at its fourth session.

**Documentation**

Draft Protocol against the Smuggling of Migrants by Land, Air and Sea, Supplementary to the United Nations Convention against Transnational Organized Crime (A/AC.254/4/Add.1/Rev.1)

Revised draft Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime (A/AC.254/4/Add.3/Rev.3)

**Background documents**

Inter-American Convention on International Traffic in Minors (A/AC.254/CRP.2)

International Maritime Organization circular on interim measures for combating unsafe practices associated with the trafficking or transport of migrants by sea (A/AC.254/CRP.3)

**5. Adoption of the report of the Ad Hoc Committee on its fourth session**

The Ad Hoc Committee is to adopt a report on its fourth session, the draft of which will be prepared by the Rapporteur.

# Annex

## Proposed organization of work of the fourth session of the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime, to be held in Vienna from 28 June to 9 July 1999

| *Date* | *Time* | *Item* | *Plenary* |
|---|---|---|---|
| Monday, 28 June | 10 a.m.-1 p.m. | 1 | Opening of the fourth session of the Ad Hoc Committee |
| | | 2 | Adoption of the agenda and organization of work |
| | | 3 | Consideration of the draft United Nations Convention against Transnational Organized Crime, with particular emphasis on articles 4 *ter*, 5, 6, 9, 10 and 14 |
| | 3-6 p.m. | 3 | Continuation of the discussion |
| Tuesday, 29 June-Friday, 2 July | 10 a.m.-1 p.m. and 3-6 p.m. | 3 | Continuation and conclusion of the discussion |
| Monday, 5 July | 10 a.m.-1 p.m. and 3-6 p.m. | 4 (a) | Consideration of additional international legal instruments: draft international legal instrument against illegal trafficking in and transporting of migrants |
| Tuesday, 6 July | 10 a.m.-1 p.m and 3-6 p.m. | 4 (a) | Continuation of the discussion |
| Wednesday, 7 July | 10 a.m.-1 p.m. | 4 (a) | Continuation and conclusion of the discussion |
| | 3-6 p.m. | 4 (b) | Consideration of additional international legal instruments: draft international legal instrument against trafficking in women and children |
| Thursday, 8 July, and Friday, 9 July | 10 a.m.-1 p.m and 3-6 p.m. | 4 (b)<br>5 | Continuation and conclusion of the discussion<br>Consideration and adoption of the report of the Ad Hoc Committee on its fourth session |

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**Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime**
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# Informal note by the United Nations High Commissioner for Human Rights

## A. Introduction and general observations

1. The United Nations High Commissioner for Human Rights is greatly encouraged by the fact that Member States have agreed to develop specific instruments on illegal trafficking and transporting of migrants (the Migrant Protocol) and on trafficking of persons (the Trafficking Protocol) under the auspices of the United Nations Convention against Transnational Organized Crime. Through the present note, the High Commissioner wishes to convey her concern about the issues those instruments are attempting to address as well as a number of comments regarding certain aspects of the two draft texts (A/AC.254/4/Add.1 and A/AC.254/4/Add.3/Rev.1). The note includes some general recommendations that the High Commissioner is willing to develop further should this be requested.

2. The High Commissioner also draws the attention of Member States to the separate, detailed analysis of the Trafficking Protocol prepared for their consideration by the United Nations Special Rapporteur on violence against women, its causes and consequences (A/AC.254/CRP.13). While that document does not necessarily reflect the position of the Office of the United Nations High Commissioner for Human Rights, the High Commissioner wishes to recall the fact that the Special Rapporteur was appointed by the Commission on Human Rights in 1994 to study the issue of violence against women—which the Special Rapporteur (reflecting the position taken by the General Assembly in article 2 of its Declaration on the Elimination of Violence against Women (resolution 48/104)) has found to include the phenomenon of trafficking as it affects women and girl-children.

3. The High Commissioner is aware that the instruments under development are not human rights treaties but more in the nature of transnational cooperation agreements with a particular focus on organized crime. However, it is important that new international instruments do not conflict with or otherwise undermine international human rights law.

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It is the High Commissioner's view that certain aspects of the two draft Protocols raise some concerns, which are set out briefly below.

## B. Draft Protocol against Illegal Trafficking and Transport of Migrants Supplementing the United Nations Convention against Transnational Organized Crime

### 1. The rights of irregular or illegal migrants

4. The vulnerability of migrants, in particular irregular or illegal migrants, as a result of their precarious situation in society often leads to violation of their most basic human rights. The present draft Protocol focuses on migrants who are or have been the victims of criminal exploitation in their countries of origin and/or transit countries and/or countries of reception. That status renders such persons even more vulnerable to further exploitation and violation of their rights.

5. It is the High Commissioner's view that any instrument dealing with this issue—irrespective of its perspective—must commit itself to preserving and protecting the fundamental rights to which all persons, including illegal migrants, are entitled. Respect for basic rights does not, of course, prejudice or otherwise restrict the sovereign right of all States to decide who should or should not enter their territories.

### 2. The need to include a protection provision in the Protocol

6. Despite the acknowledgement in the preamble to the draft Protocol that "*illegal trafficking and transport of migrants is a particularly heinous form of transnational exploitation of individuals in distress*", the Protocol itself contains no protection principle. In addition to its negative impact on trafficked migrants, a neglect of victim issues may well compromise the effective implementation of this instrument. The High Commissioner urges that consideration be given to inserting a provision to the effect that Member States are under an obligation to ensure respect for and protection of the rights of illegal migrants, which are owed to them under applicable international law. Such a general provision could be strengthened through reference to the core rights to which irregular or illegal migrants are entitled, including the right to life; the prohibition of torture and cruel, inhumane or degrading treatment or punishment; and the principle of non-discrimination.

### 3. The need to address the issue of detention

7. Irregular or illegal migrants who are detained by the receiving State have a recognized right under international law to be treated with humanity and dignity—both before and after a determination is made concerning the lawfulness of their detention. The practical importance of this right justifies a direct and specific reference in the Protocol.

### 4. The need to protect asylum seekers who are also irregular or illegal migrants

8. The High Commissioner draws attention to the fact that increasing numbers of asylum seekers—including those with genuine claims to refugee status—are being transported by means that would be covered in the present Protocol. The principle of *non-refoulement*, which is the core of international refugee protection and which is recognized as a norm of customary international law, must be preserved in this instrument. The High Commissioner strongly advocates the insertion of a provision to the effect that the

illegality of an individual's entry into a State will not be a factor adversely affecting that person's claim for asylum. In order to make such a provision effective, signatories should be required to ensure that illegal migrants coming within the scope of this instrument are given full opportunity (including through provision of information) to make a claim for asylum or to present any other justification for remaining in the country and that such claims be considered on a case-by-case basis.

### 5. Prostitution and sexual exploitation

9. The reference in the present preamble to prostitution and sexual exploitation is not followed up in the draft.

### 6. A savings clause

10. Consideration could be given to inserting a savings clause such as the one contained in article 15 of the draft Trafficking Protocol.

## C. Draft Protocol to Prevent, Suppress and Punish Trafficking in Women and Children [Persons], Supplementing the United Nations Convention against Transnational Organized Crime

### 7. Importance of this Protocol

11. The observations of the High Commissioner in relation to this Protocol stem in part from an understanding of the potential significance of this instrument. As noted in the Preamble, there is as yet no universal instrument that addresses all aspects of trafficking in persons. In fact, "trafficking" has never been precisely defined in international law and the most recent international instrument dealing with trafficking and related issues is now more than half a century old.

### 8. Definition of trafficking

12. From this perspective the High Commissioner generally welcomes the approach to defining "trafficking" as reflected in option 1 of article 2. A broad and inclusive definition is vital to ensuring the present and continuing relevance of this instrument. In this respect it is relevant to note that the methods by which and the purposes for which individuals are trafficked are constantly changing. While the draft definition does recognize that trafficking takes place for reasons beyond forced prostitution (reference to "sexual exploitation"), it limits other purposes of trafficking to "forced labour". A preferable and more accurate description of purposes would include reference to forced labour and/or bonded labour and/or servitude. (The term "servitude", when used in this context, should be understood to include practices that have been defined elsewhere as "contemporary forms of slavery", such as forced prostitution.) Such a reference would be consistent with existing international law (see, for example, article 8 of the International Covenant on Civil and Political Rights) (see resolution 2200 A (XXI), annex). It would also serve to avoid the implementation difficulties inherently associated with undefined, imprecise and emotive terms such as "sexual exploitation" when used in connection with adults.

### 9. Definition of trafficking in children

13. For reasons of clarity, the High Commissioner suggests that the definition of trafficking in children be dealt with in a separate section. This section should also include an acknowledgment that children have special rights under international law and that child victims of trafficking have special needs that must be recognized and met by States parties.

14. Consistency with current international law requires that the "child" be defined as "every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier" (article 1 of the Convention on the Rights of the Child (resolution 44/25, annex)). When defining the purposes for which children are trafficked, reference should be made to both sexual and economic exploitation. The High Commissioner urges inclusion of specific reference to the Convention on the Rights of the Child, which deals with both economic exploitation (article 32) and sexual exploitation (article 34). It should also be noted that the overwhelming majority of States are already under an existing legal obligation to take measures "to prevent the abduction of, the sale of or traffic in children for any purpose or in any form" (article 35).

### 10. The need to ensure respect for the principle of non-discrimination

15. The principle of non-discrimination is a fundamental rule of international law and one of particular relevance to the situation and vulnerabilities of irregular or illegal migrants. The High Commissioner is of the view that the Protocol should contain a broad non-discrimination provision. The non-discrimination clause in the Rome Statute of the International Criminal Court (A/CONF.183/9, article 21, para. 3) would appear to be a useful model for such a provision.

### 11. Assistance for and protection of victims of trafficking

16. The High Commissioner has noted with concern that despite the commitment contained in the Preamble to this instrument, the victim protection and assistance provisions of the draft Protocol are very weak. As a general observation, the High Commissioner notes that under the present draft text, victims of trafficking would appear to gain very little from cooperating with national authorities in the prosecution of traffickers. Assistance and protection provisions must, at a minimum, meet basic international human rights standards. From this perspective, specific reference should be made to adequate housing, appropriate health care and other necessary support facilities.

17. Assistance and protection provisions should also take account of the fact that trafficked persons are usually in an extremely vulnerable situation and may be subject to reprisals from traffickers. In addition, it should be noted that trafficked persons are often subject to detention and prosecution for offences related to their status (including violation of immigration laws, prostitution, etc.). States parties should be directed to refrain from detaining or prosecuting trafficked persons for such status-related offences.

18. The requirement of States parties to maintain the confidentiality of legal proceedings relating to trafficking in persons (draft article 4, paragraph 1) should not be limited to "appropriate cases and to the extent possible under domestic law". The right to privacy is enshrined in international human rights law and its protection is especially important in the situations covered by this Protocol where the continued safety of the trafficked person must be a primary consideration.

19. The wide discretion implicit in the use of the term "in appropriate cases" in paragraph 2 of draft article 4 should also be restricted. Once a determination is made that an individual is a trafficked person to which this Protocol applies, then the provision of information with regard to court and administrative proceedings; assistance to enable their views and concerns to be presented and considered; and housing, education and care for children should not be dependent upon a further subjective determination of "appropriateness".

## 12. Status of the trafficked person/return of victims of trafficking

20. The High Commissioner is of the view that safe and, as far as possible, voluntary return must be at the core of any credible protection strategy for trafficked persons. A failure to include provision for safe and (to the extent possible) voluntary return would amount to little more than an endorsement of the forced deportation and repatriation of victims of trafficking. When trafficking occurs in the context of organized crime, such an endorsement presents an unacceptable safety risk to victims.

21. At a very minimum, the identification of an individual as a trafficked person should be sufficient to ensure that immediate expulsion that goes against the will of the victim does not occur and that the expanded protection and assistance provisions of the Protocol suggested above become immediately applicable. The High Commissioner urges Member States to consider a provision whereby trafficked persons are provided with the option of at least temporary residence. In addition to providing a measure of safety, such a provision would encourage victims of trafficking to cooperate with the authorities and thereby contribute to achieving the law enforcement objectives of the Protocol. It is important in this context to note that victim protection must be considered separately from witness protection, as not all victims of trafficking will be selected by investigating and prosecuting agencies to act as witnesses in criminal proceedings.

## 13. Victim rehabilitation

22. The High Commissioner considers that the limitation of "in appropriate cases" in draft article 7 is unnecessarily restrictive and not in accordance with international human rights law, which clearly provides that victims of human rights violations such as trafficking should be provided with access to adequate and appropriate remedies. The present paragraph 1 of article 7 could be strengthened through insertion of a general provision obliging States parties to provide information to trafficking victims on the possibilities of obtaining remedies, including compensation for trafficking and other criminal acts to which they have been subject, and to render reasonable assistance to such victims to enable them to obtain the remedies to which they are entitled under national law.

23. The obligation upon States to consider implementing measures "to provide for the physical, psychological and social recovery of victims of trafficking" should be made more precise. The High Commissioner suggests the insertion of a provision to the effect that States Parties are to take steps (both individually and through international assistance and cooperation) to provide for the physical, psychological and social recovery of victims of trafficking.

24. Finally, the High Commissioner notes that the term "rehabilitation" as used in international legal texts is generally reserved for offenders. The terms used in the Basic Principles of Justice for Victims of Crime and Abuse of Power (see resolution 40/34,

annex)—victim "restitution", "compensation" and "assistance"—would be much more appropriate in this context.

### 14. Prevention of trafficking

25. The High Commissioner draws attention to the fact that national anti-trafficking measures have been used in some situations to discriminate against women and other groups in a manner that amounts to a denial of their basic right to leave a country and to migrate legally. Draft article 12 could usefully include a provision to the effect that actions aimed at preventing trafficking should not have discriminatory effects or infringe upon the right of an individual to leave her or his country or legally to migrate to another.

## D. Relation between the two protocols

### Ensuring consistency between the two protocols and avoiding conflicts in application

26. The High Commissioner endorses the concept of developing two Protocols dealing with illegal migration and trafficking, respectively. There is, however, a need to ensure consistency between the two instruments and to avoid conflict in their separate and joint application.